



Adapting for the Next Generation:
The Alaska Native Claims Settlement Act at 45
and
32nd Annual Alaska Native Law Conference
October 14, 2016

Panel IV
State Legislative Update

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

AHTNA, INC.,)
)
Plaintiff,)
)
v.)
)
STATE OF ALASKA, DEPARTMENT)
OF TRANSPORTATION & PUBLIC)
FACILITIES; STATE OF ALASKA,)
DEPARTMENT OF NATURAL)
RESOURCES; KEITH HJELMSTAD;)
SANDRA HJELMSTAD; AMY J.)
HUBBARD; LESTER A. HUBBARD;)
LUCY E. JORDAN; MICHAEL J.)
JORDAN; RICHARD A. KOVALSKY;)
AARON D. MAULDIN; DONNA)
RUTH MILLER; JOSEPH DONALD)
MILLER; DEBRA J. SISSOM;)
KENNETH H. SISSOM; JUDY V.)
VOORHIS; TONY R. VOORHIS;)
TERRY TOWNSEND; DEBBIE)
TOWNSEND; ERIC HELMS; LINDA)
HELMS; and all other persons or parties)
unknown claiming a right, title, estate,)
lien, or interest in the real estate)
described in the pleadings in this action,)
)
Defendants.)

Case No. 3AN-08-06337 CI

**ORDER GRANTING AHTNA, INC.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

On December 17, 2015 Plaintiff Ahtna, Inc. ("Ahtna"). filed a motion for partial summary judgment. Ahtna's motion seeks a declaration from this Court that rights-of-way established under Revised Statute ("RS") 2744, 43 U.S.C. § 932, permit ingress and egress, but not campsites, day-use sites, and other uses

unrelated to transportation. The Court heard oral argument on Ahtna's motion on April 14, 2016. The Court now concludes that the rights conveyed to the public under RS 2477 are limited to egress and ingress. Accordingly, Ahtna's motion for partial summary judgment is GRANTED.

A. Background

This action concerns a road, locally known as the Brenwick-Craig Road, which runs approximately 25 miles from Copper Center to the outlet of Klutina Lake. The road occupies a federal highway easement, but the State claims additional rights to the roadway and surrounding property under RS 2477. In addition to the road itself, the State alleges that it obtained rights under RS 2477 to "various spurs and arterials." State of Alaska's Answer at 12, ¶ 84. The State further alleges that these "spurs and arterials" were historically used for "boat launching, camping, [and] day-use sites." *Id.* According to the State, RS 2477 conveyed not only the right-of-way itself, but also the right to incidental public uses such as camping and boat launching.

B. Summary Judgment Standard

Summary judgment is proper when "there is no genuine issue as to any material fact" and "the moving party is entitled to judgment as a matter of law." Civil Rule 56(c); *Christensen v. Alaska Sales & Serv., Inc.*, 335 P.3d 514, 516 (Alaska 2014). Here, the State's interpretation of RS 2477 is, as a matter of law, overbroad. Therefore, Ahtna is entitled to partial summary judgment.

C. RS 2477

Congress passed RS 2477 in 1866. In its entirety, the statute provides: "[t]he right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." 43 U.S.C. § 932. This grant "was self-executing, meaning that an RS 2477 right-of-way automatically came into existence if a public highway was established across public land in accordance with the law of Alaska." *Price v. Eastham*, 75 P.3d 1051, 1055 (Alaska 2003).

In 1976, Congress enacted the Federal Land Policy and Management Act, which repealed RS 2477. *Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735, 741 (10th Cir. 2005). However, rights-of-way established before the repeal remain valid, and have been frozen “as they were in 1976.” *Id.*

To prove that an RS 2477 right-of-way exists, a claimant must show either “some positive act” by the State “clearly manifesting an intention to accept a grant,” or continuous public use “for such a period of time and under such conditions as to prove that the grant has been accepted.” *Hamerly v. Denton*, 359 P.2d 121, 123 (Alaska 1961). A right-of-way created by public use “connotes definite termini.” *Dillingham Commercial Co. v. City of Dillingham*, 705 P.2d 410, 414 (Alaska 1985).

In *Dillingham Commercial*, the City of Dillingham claimed it had obtained fee simple ownership of a right-of-way by operation of RS 2477. 705 P.2d at 415. The Alaska Supreme Court rejected this position, reversing the lower court and holding that “a right of way creates only a right of use.” *Id.* More specifically, the Court held that one who proves an RS 2477 right of way gains only the right to pass over the land, or the right of ingress and egress. The dominant estate holder cannot “use the land for any purpose, such as a park.” *Id.*

The *Dillingham Commercial* Court’s reasoning aligns with the definition of “highway” in the Alaska Statutes. AS 19.59.001(8) defines “highway” to include a “road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof.” Thus, RS 2477, which granted rights-of-way for “highways over public lands,” conveyed the right to pass over the land, and nothing more. It did not grant easements for recreational uses unrelated to “travel between two definite points.” *Shultz v. Dep’t of Army, U.S.*, 10 F.3d 649, 658 (9th Cir. 1993).

D. Analysis

Paragraph 84 of the State's answer implies that RS 2477 conveyed not only the rights of ingress and egress, but ancillary uses such as "boat launching, camping, [and] day-use sites." While the State's position is partially correct, it is far too inclusive. To the extent that the State claims RS 2477 rights-of-way for "ingress and egress to the Klutina River," the State may prove such rights-of-way through admissible evidence under the standards set forth in Alaska law.¹ But boat launches, campsites, and other recreational uses exceed the maximum rights available to a claimant under RS 2477. Such uses are merely incidental to public travel, and would not have created additional rights-of-way while RS 2477 was in effect. Accordingly, any additional reservation of property rights for recreational uses would constitute new development which, by its nature, would not have existed when Congress repealed RS 2477 in 1976.

RS 2477 rights-of-way may accommodate regular maintenance and changes in technology. *See, e.g., Sierra Club v. Hodel*, 848 F.2d 1068, 1083 (10th Cir. 1988) (holding that RS 2477 permits changes that are "reasonable and necessary to assure safe travel"); *see also* Restatement (Third) of Property (Servitudes) § 4.10, cmt. f. ("The manner, frequency, and intensity of use of the servient estate may change to take advantage of developments in technology and to accommodate normal development of the dominant estate[.]"). They may not, however, expand in scope to accommodate new development unrelated to ingress and egress. To hold otherwise would permit RS 2477 rights-of-way to unreasonably encroach upon the servient estate. *Southern Utah Wilderness*

¹ *See Hamerly*, 359 P.2d at 123; *Dillingham Commercial*, 705 P.2d at 414-15; *Price*, 128 P.3d at 728-29. The State must carry a heavy burden to prove any such right-of-way. The State must show, first, that "the alleged highway was located 'over public lands.'" *Hamerly*, 359 P.2d at 123. Second, the State must prove that "the character of . . . use was such as to constitute acceptance by the public of the statutory grant." *Id.* Whether a right-of-way exists is a question of fact. *Id.* Moreover, a right-of-way "will not be presumed against the owner of the land." *Id.* The burden will rest on the State "to establish [the right-of-way] by proof that is clear and unequivocal." *Id.*

Alliance, 425 F.3d at 747 (holding that RS 2477 rights-of-way are bound by “[t]he principle that [an] easement holder must exercise its rights so as not to interfere unreasonably with the rights of the owner of the servient estate”).

The State’s position lacks any meaningful limit on the scope of an RS 2477 right-of-way. In its present form, the State’s interpretation already goes beyond the statutory definition of “highway.” *See* AS 19.59.001(8). And, because it seemingly extends to any uses incident to backcountry travel, the State’s view could include within a right-of-way gas stations, lodges, hotels, automotive repair shops, and retail establishments. After all, any sort of long-distance travel brings with it the need to rest and replenish provisions. The Court declines to read so much into so short a statute. RS 2477 granted only the right to pass over public land. It did not—and cannot now, 40 years after its repeal—convey the right to develop that land for recreational and commercial purposes.

E. Conclusion & Order

Because RS 2477 granted only the right of ingress and egress, Ahtna’s motion for partial summary judgment is GRANTED. The State may prove, through “clear and unequivocal” evidence, any alleged right of way for “ingress and egress to the Klutina River.” *Hamerly*, 359 P.2d at 123; State of Alaska’s Answer at 12, ¶ 84. But the State may not include within the scope of its alleged right-of-way “boat launch[es], camping, and day-use sites.” *Id.*

ORDERED this 11th day of May, 2016, at Anchorage, Alaska.

I certify that on 5/11/2016
a copy of the above was mailed to
each of the following at their or emailed
addresses of record:

mailed: Miller, Townsend, Helms, Mauldin
emailed: Halpern, Sullivan, Schechter, Trickey
Singer, Stark, Arjiviel

Jackie Kapper
Jackie Kapper, Judicial Assistant

Andrew Guidi
ANDREW GUIDI
Superior Court Judge

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

KELLY A. DICKSON, TRUSTEE OF
"THE KELLY A. DICKSON 2008
TRUST," and DONNA C. DEFUSCO,
Plaintiffs,

v.
STATE OF ALASKA,
DEPARTMENT OF NATURAL
RESOURCES; and also other persons
or parties unknown claiming a right,
title, estate, lien, or interest in the real
estate described in the complaint in this
action,
Defendant.

Case No. 3AN-12-07260 CI

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action came before the Court for a twenty-seven (27) day non-jury trial on January 11-15, 19-22, 25-26, 28-29, February 1-5, 8-12, 16, and March 21-23, 2016. Plaintiffs, Kelly A. Dickson, Trustee of "The Kelly A. Dickson 2008 Trust," and Donna C. DeFusco ("Plaintiffs"), appeared by and through their counsel, Adolf V. Zeman Jr. and Leslie R. Need of Landye Bennett Blumstein LLP. Defendant, State of Alaska, Department of Natural Resources ("Defendant"), appeared by and through its counsel, Z. Kent Sullivan and Cheryl A. Brooking.

The Court has heard and considered the testimony of the parties and their respective witnesses, and has read, viewed, and considered the evidence submitted. Deeming itself fully advised, the Court now makes and renders the following Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT

I. General

A. Parties

1. Plaintiffs, Kelly A. Dickson as Trustee for “The Kelly A. Dickson 2008 Trust” and Donna C. DeFusco, are the owners of a combined 240 acres of land in the Big Lake area west of Knik, Alaska.

2. Defendant, the State of Alaska, Department of Natural Resources (“DNR”), is the agency currently in charge of managing the State’s R.S. 2477¹ rights-of-way and prescriptive easements.² The State’s client representative is Lesli Schick, an employee in the Iditarod Trails Unit within DNR.

B. Plaintiffs’ Property

i. Description

3. Plaintiffs’ property is situated in the Big Lake area approximately nine miles west of Knik, Alaska. Plaintiffs’ property is accurately depicted by two adjacent grey rectangles to the southwest of Sevenmile Lake in Exhibit 2316.³ A larger view of Plaintiffs’ property is outlined in yellow in Exhibit 2505.⁴

4. Plaintiffs’ father, Benjamin Cowart, filed a homestead application on November 25, 1958 for 160 acres of land.⁵ Mr. Cowart received a patent from the United States government for this land on February 18, 1965.⁶ The family’s original homestead parcel is described as:

W1/2, NW1/4 of Section 27, and E1/2, NE1/4 of Section 28, Township 16 North, Range 4 West, Seward Meridian, containing 160 acres.⁷

¹ “R.S. 2477” refers to 43 U.S.C. § 932, Revised Statute 2477, which was enacted in 1866 and repealed in 1976. See *Price v. Eastham*, 75 P.3d 1051, 1055 (Alaska 2003) (*Price I*).

² DNR inherited this role from the State Department of Transportation and Public Facilities (“DOT”), the agency that previously managed public rights-of-way and easements. See AS 19.30.400.

³ Exhibit 2316 (admitted Feb. 2, 2016).

⁴ Exhibit 2505 (admitted Feb. 10, 2016); see also Exhibit 2234 (admitted Feb. 5, 2016).

⁵ Exhibit 1166 (admitted Jan. 11, 2016); see also Exhibit 1135 (admitted Jan. 11, 2016).

⁶ Exhibit 2286 (admitted Feb. 12, 2016).

⁷ Exhibit 1016 (admitted Jan. 11, 2016) (“Seward Meridian, Alaska. T. 16 N., R. 4W., Sec. 27, W1/2NW1/4[:] Sec. 28, E1/2NE1/4. The area described contains 160.00 acres[.]”).

5. The original Cowart family homestead is now divided, with the portion in Section 28 held by Ms. DeFusco and the portion in Section 27 held by Ms. Dickson.⁸

6. The Cowart family also acquired two 40-acre parcels adjacent to the southeast corner of the original homestead. The first 40-acre parcel was acquired on April 20, 1983, and is described as:

W1/2, W1/2, SW1/4 of Section 27, Township 16 North, Range 4 West, Seward Meridian, containing 40 acres.⁹

The second 40-acre parcel was acquired on August 4, 1988, and is described as:

E1/2, W1/2, SW1/4 of Section 27, Township 16 North, Range 4 West, Seward Meridian, containing 40 acres.¹⁰

7. The two 40-acre parcels purchased in the 1980's by the Cowart family are now held by Ms. Dickson.¹¹

8. Altogether, Ms. Dickson owns three parcels previously owned by the Cowart family, totaling 160 acres of land. Ms. Dickson's property is comprised of the eastern half of the Cowart family's original homestead, along with the two 40-acre parcels. Ms. Dickson owns the following described parcels of real property which are the subject of this action:

"W1/2, NW1/4 of Section 27, Township 16 North, Range 4 West, Seward Meridian, containing 80 acres."¹²

⁸ The Court refers to "Ms. Dickson" as a Plaintiff in this case for her role as the Trustee of "The Kelly A. Dickson 2008 Trust." See Exhibit 1154 (admitted Jan. 11, 2016); Exhibit 1161 (admitted Jan. 11, 2016); Exhibit 1165 (admitted Jan. 11, 2016).

⁹ Exhibit 1158 (admitted Jan. 11, 2016) ("The West one-half of the West one-half of the Southwest one-quarter (W1/2 W1/2 SW1/4) Section 27, Township 16 North, Range 4 West, Seward Meridian, Palmer Recording District, Third Judicial District, State of Alaska.").

¹⁰ Exhibit 2101 (admitted Feb. 12, 2016) ("TOWNSHIP 16 NORTH, RANGE 4 WEST; SEWARD MERIDIAN; Section 27: E1/2W1/2SW1/4. CONTAINING 40.00 ACRES, MORE OR LESS." (emphasis in original)).

¹¹ Exhibit 1161; Exhibit 1165.

¹² Exhibit 1154.

W1/2, W1/2, SW1/4 of Section 27, Township 16 North, Range 4 West, Seward Meridian, containing 40 acres.¹³

E1/2, W1/2, SW1/4 of Section 27, Township 16 North, Range 4 West, Seward Meridian, containing 40 acres.¹⁴

9. Ms. DeFusco owns the western half of the Cowart family's original homestead, totaling 80 acres of land. Ms. DeFusco owns the following described real property which is the subject of this action:

"E1/2, NE1/4 of Section 28, Township 16 North, Range 4 West, Seward Meridian, containing 80 acres."¹⁵

10. Plaintiffs' total combined property is 240 acres in size, and is accurately depicted along with current ownership in Exhibit 2347.¹⁶

11. Plaintiffs' property is currently bounded by three roads, all with public rights-of-way not at issue in this dispute. Burma Road runs generally north-south on the western side of Ms. DeFusco's property, and there is an easement for Burma Road to run through the north-western corner of her property. Moore Road runs along the northern border of Plaintiffs' property at the section line. Ridge Road runs north-south along the eastern border of Ms. Dickson's property, although legal access stops where the Cowart family's original homestead ends and the two 40-acre parcels begin.¹⁷

ii. Use

12. After February 15, 1960, Mr. Cowart no longer lived at his family homestead full time as his "permanent residence."¹⁸ Instead, the Cowart family resided in Anchorage and used the 160-acre property as a recreational "weekend

¹³ Exhibit 1161 ("W1/2, W1/2, SW1/4, Section 27: T16N, R4W, Seward Meridian, containing 40 acres.").

¹⁴ Exhibit 1165 ("T16N, R4W, Seward Meridian, Section 27: E1/2, W1/2, SW1/4[,] containing 40 acres more or less.").

¹⁵ Exhibit 1182 (admitted Jan. 14, 2016).

¹⁶ Exhibit 2347 (admitted Jan. 25, 2016). Exhibit 2347 also shows where Defendant alleges two rights-of-way cross Plaintiffs' property. *Id.*

¹⁷ See *id.*; see also Exhibit 2234.

¹⁸ Exhibit 1167 (admitted Jan. 11, 2016).

retreat” during the summer through the 1960’s and 1970’s. On the north half of the homestead, Mr. Cowart built a cabin and cleared approximately 20 acres to grow potatoes. Plaintiffs and their family made very little use of the property in the winter.¹⁹

13. Ms. DeFusco’s earliest memory of the property is 1964, when she was four years old. Ms. Dickson’s earliest memory of the property is 1969, when she was six years old. Both Ms. Dickson and Ms. DeFusco attended college outside of Alaska, but would return to Anchorage during summer breaks and would visit the family homestead. Both Ms. Dickson and Ms. DeFusco moved out of Alaska in 1985 and 1986 respectively.²⁰

14. Mr. Cowart died in 1997, and Mrs. Cowart became the owner of the property. Although Mrs. Cowart visited the property occasionally, she never stayed overnight, and did not visit in the winter. When Mrs. Cowart died in 2007, Plaintiffs inherited the property.²¹

15. Since inheriting the property, Ms. Dickson testified that she visits the property every summer.²² Ms. DeFusco testified that she visits the property less frequently.²³

C. Claims and Counterclaims

16. Plaintiffs filed this action seeking quiet title to their property free and clear of easements or rights-of-way on May 16, 2012.²⁴ Defendant answered and

¹⁹ See generally Kelly Dickson’s Testimony (Jan. 11-13, 2016; Mar. 22, 2016); Donna DeFusco’s Testimony (Jan. 14-15, 2016).

²⁰ See generally Kelly Dickson’s Testimony (Jan. 11-13, 2016; Mar. 22, 2016); Donna DeFusco’s Testimony (Jan. 14-15, 2016).

²¹ See generally Kelly Dickson’s Testimony (Jan. 11-13, 2016; Mar. 22, 2016); Donna DeFusco’s Testimony (Jan. 14-15, 2016).

²² See generally Kelly Dickson’s Testimony (Jan. 11-13, 2016; Mar. 22, 2016).

²³ See generally Donna DeFusco’s Testimony (Jan. 14-15, 2016).

²⁴ Plaintiffs’ Complaint to Quiet Title (May 16, 2012); see also Plaintiffs’ First Amended Complaint to Quiet Title (Dec. 22, 2014).

counterclaimed, contending that Plaintiffs' property is traversed by two separate public rights-of-way.²⁵

17. The first route is identified for purposes of this litigation as the "historic Iditarod Trail."²⁶ Although the entire "historic Iditarod Trail" runs from Seward to Nome, this litigation is only concerned with the section of the trail that generally runs east-west from Knik to Susitna.²⁷ This part of the "historic Iditarod Trail" is also known as the Knik to Susitna Trail, the Knik-Susitna Station Trail, RST 118, and Alaska Road Commission ("ARC") Route 20A.

18. The second route is identified for purposes of this litigation as "Homestead Road."²⁸ Homestead Road is also known as Sassara's Road, Khyber Pass, Khyber Pass Road, Kyber Road, Kerber Road, and the Main Road.²⁹ Homestead Road generally runs east from Burma Road, first across the southern portion of Ms. DeFusco's property, then across the northern portion of Ms. Dickson's two 40-acre parcels.³⁰

19. Defendant claims an entitlement to both routes across Plaintiffs' property based on R.S. 2477 and public prescription in the locations as depicted in Exhibit 2347.³¹

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²⁵ Defendant's Answer, Affirmative Defenses, Counterclaims & Demand for Jury Trial (July 11, 2012); *see also* Defendant's Answer, Affirmative Defenses, & Counterclaims to Plaintiffs' First Amended Complaint (Feb. 9, 2015).

²⁶ *See* Exhibit 2347 (listing the alleged route of the "historic Iditarod Trail" as "RST 118").

²⁷ *See* Exhibit 2466 (admitted Feb. 1, 2016).

²⁸ *See* Exhibit 2347 (showing the alleged route of Homestead Road as "Homestead Road (aka Khyber Pass)").

²⁹ Homestead Road was also referred to as "Burma Road" by Charles "Chuck" Sassara Jr. in his videotaped deposition. *See* Exhibit 2457, at 21-22 (admitted Feb. 1, 2016); *see also* Log Notes, CD 502, Log No. 8:42:42, at 15 (Jan. 29, 2016) (playing the videotaped deposition of "Chuck" Sassara, Jr.). The Court only notes this reference in a footnote to mitigate any possible confusion with Burma Road, an existing public right-of-way which runs generally north-south on the western side of Ms. DeFusco's property. *See* Exhibit 2347.

³⁰ *See* Exhibit 2347. Homestead Road continues beyond Plaintiffs' property to the location of some homesteads of Mr. Sassara's family members. *See* Exhibit 2058 (admitted Feb. 2, 2016).

³¹ Defendant's Answer and Counterclaims to Plaintiffs' First Amended Complaint, *supra* note 25; Exhibit 2347; *see also* Exhibit 2234.

II. The “historic Iditarod Trail”

A. Other Iditarod Trails

20. The name “Iditarod Trail” has caused some confusion during this trial. This is because there are a number of trails, historic and contemporary, that have been referred to as the “Iditarod Trail.” This litigation only concerns a portion of the “historic Iditarod Trail,” a trail that has existed for over a hundred years and will be defined in greater detail below.³²

21. The “historic Iditarod Trail” is distinct from the “Iditarod National Historic Trail” and the Iditarod Trail Race. The “Iditarod National Historic Trail” was created by Congress in 1978 “to preserve a prominent part of America’s past for future generations”³³ without acquiring any “lands or interests in lands.”³⁴ The Iditarod Trail Race, an annual sled dog race, is now run along another route that changes each year.

22. Some portions of each of these “Iditarod Trail[s]” overlap with one another. Others portions are unique to that specific trail. This litigation only concerns the “historic Iditarod Trail.”³⁵

B. Problems with Relying on Historic Maps

23. Because this case concerns the “historic Iditarod Trail,” a trail that has existed for over a hundred years, a number of old maps were used throughout this trial to determine the trail’s location. However, such maps are not particularly helpful in determining the exact location of the “historic Iditarod Trail” and other trails for a number of reasons.

24. Rockford (“Rocky”) Beard-Weber, a DNR employee, was qualified as a non-retained expert on the use and application of geographic information system

³² See *infra* Findings of Fact, Part II: The “historic Iditarod Trail,” Sections C-F.

³³ Exhibit 2418, at 4 (admitted Feb. 12, 2016).

³⁴ National Parks and Recreation Act of 1978, Pub. L. No. 95-625, § 551, 92 Stat. 3467, 3517 (1978).

³⁵ See *supra* Findings of Fact, ¶ 17.

("GIS") software in this case.³⁶ Mr. Beard-Weber testified that old maps are not very accurate with respect to their size, scale, and scope.³⁷ Mr. Beard-Weber also testified that, although historic maps may be nice in a broader context, they are not helpful in their location of features and are not helpful for locating remote trails on the ground.³⁸ This is mostly because the old maps are zoomed out, and it was not the intention for these old maps to be used by travelers to navigate from feature to feature using a compass.³⁹ Mr. Beard-Weber testified that even when features are listed on old maps, they are very disproportional to each other in an inconsistent fashion.⁴⁰ Mr. Beard-Weber also testified that even United States Geologic Survey ("USGS") topographic maps are generally not very accurate for trying to pinpoint a location on the ground.⁴¹

25. Jonathon Lang, a land surveyor retained by Plaintiffs, was qualified as an expert on land surveying.⁴² Mr. Lang testified that it is difficult to determine the location of trails based on some historic maps.⁴³

26. Karen Tilton, a professional land surveyor retained by Defendant, was qualified as a "surveying right-of-way expert witness" in this case.⁴⁴ Ms. Tilton testified that the ARC maps and the early historic maps support the existence of the Iditarod Trail but did not aid her in locating a physical trail on the ground.⁴⁵

27. Based on the expert testimony in this case, the Court finds that historic maps are insufficient to identify the exact placement of a trail on the ground. This is because of the scale of the maps, the lack of survey information, and the limited

³⁶ See Log Notes, CD 502, Log No. 9:05:06, at 16 (Jan. 21, 2016).

³⁷ See Log Notes, CD 502, Log No. 8:50:22, at 13 (Jan. 28, 2016) (testimony of "Rocky" Beard-Weber).

³⁸ See *id.* at 30; Log Notes, *supra* note 29, at 5 (testimony of "Rocky" Beard-Weber).

³⁹ See Log Notes, *supra* note 29, at 6 (testimony of "Rocky" Beard-Weber).

⁴⁰ See *id.* (testimony of "Rocky" Beard-Weber).

⁴¹ See *id.* at 5 (testimony of "Rocky" Beard-Weber).

⁴² See Log Notes, CD 502, Log No. 8:35:02, at 15 (Jan. 19, 2016).

⁴³ See Log Notes, CD 502, Log No. 8:34:33, at 18 (Jan. 20, 2016) (testimony of Jonathon Lang).

⁴⁴ See Log Notes, CD 502, Log No. 8:50:55, at 9 (Feb. 5, 2016).

⁴⁵ See generally Karen Tilton's Testimony (Feb. 5, 2016; Feb. 8, 2016).

purposes for which the maps were produced, i.e., that the maps were made without the intent to provide navigable accuracy in any level of detail.⁴⁶

C. The Old “historic Iditarod Trail”

28. Bryan Taylor, a DNR employee, was qualified as an expert concerning the use and history of the trails at issue in this case.⁴⁷ Mr. Taylor testified that what later became the “historic Iditarod Trail” began as an Alaska Native trail, running from Seward to Nome.⁴⁸ He testified that the earliest known map of a trail from Seward to Nome is from 1911, which shows the existence of a “winter trail.”⁴⁹

29. Mr. Taylor testified that the Knik to Susitna Trail is a portion of this “winter trail” that would later become the “historic Iditarod Trail.” He testified that this portion of the trail was first used by Alaska Natives, notably by the upper Cook Inlet Dena’ina, as a trade route. Mr. Taylor also testified that the Russians depended on Alaska Natives to access the interior of Alaska, and that the Americans later incorporated the existing trails for the fur trade.⁵⁰

30. Ms. Dickson, one of the Plaintiffs in this case, also testified about the historic trails in the general vicinity of her property. The Court notes that Ms. Dickson was not qualified as an expert in this case, and finds her testimony to generally be biased and self-interested. Ms. Dickson testified that, according to maps made in 1899 and 1906, the Knik to Susitna Trail was north of the property.⁵¹

31. Although Ms. Dickson’s observation may be correct, the Court does not find that Ms. Dickson’s testimony necessarily contradicts Mr. Taylor’s testimony.

⁴⁶ See generally Jonathon Lang’s Testimony (Jan. 19-21, 2016; Mar. 22, 2016); “Rocky” Beard-Weber’s Testimony (Jan. 21-22, 2016; Jan. 25, 2016; Jan. 28-29, 2016; Mar. 21, 2016); Karen Tilton’s Testimony (Feb. 5, 2016; Feb. 8, 2016).

⁴⁷ See Log Notes, CD 502, Log No. 8:35:25, at 10 (Feb. 1, 2016).

⁴⁸ See *id.* at 12 (testimony of Bryan Taylor); Exhibit 2466.

⁴⁹ See Log Notes, *supra* note 44, at 16 (testimony of Bryan Taylor); Exhibit 2466.

⁵⁰ See generally Bryan Taylor’s Testimony (Feb. 1-5, 2016).

⁵¹ See Exhibit 1032 (admitted Jan. 12, 2016) (Johnston and Herning’s 1899 map); Exhibit 1033 (admitted Jan. 12, 2016) (Herning’s 1906 map); see generally Kelly Dickson’s Testimony (Jan. 11-13, 2016; Mar. 22, 2016).

This is because the existence of a historic trail located north of Plaintiffs' property does not mean that another historic trail cannot cross Plaintiffs' property. Furthermore, the Court does not find the maps Ms. Dickson relied on in reaching her opinion to be reliable as to a trail's location.⁵²

D. ARC Improvements to the "historic Iditarod Trail"

32. The ARC improved the "winter trail" in what would later be known as the "historic Iditarod Trail" to provide access from Seward to Nome in the early 1900's. This decision was made after an initial survey of the "winter trail" route, which began in Seward, was conducted by Walter Goodwin in 1908.⁵³

33. The Knik to Susitna portion of the "winter trail" was realigned and identified by the ARC as Route 20A.⁵⁴ The ARC realigned the route in 1912, with the goal of making the preexisting "winter trail" a less "circuitous route" by reducing the total mileage for that section of the trail.⁵⁵ This more direct line between Knik and Susitna Station is what is now known and referred to as the "historic Iditarod Trail."

34. Mr. Taylor testified about a manuscript map (Exhibit 2468) that shows the general locations of the old and new alignments for the Knik to Susitna Trail.⁵⁶ Although the exact date and author of the map are unknown,⁵⁷ Mr. Taylor testified that the red line going from "Knik" to "[Susitna] Station" appeared to be the proposed location of the realigned route, which became Route 20A.⁵⁸ Mr. Taylor

⁵² See *supra* Findings of Fact, ¶¶ 23-27.

⁵³ See Exhibit 2393, at 8 (admitted Feb. 12, 2016); see generally Bryan Taylor's Testimony (Feb. 1-5, 2016).

⁵⁴ Exhibit 1034, at 12 (admitted Jan. 19, 2016).

⁵⁵ *Id.*; see Log Notes, *supra* note 47, at 16 (testimony of Bryan Taylor); see also Exhibit 2261, at 1 (admitted Jan. 19, 2016) (characterizing the old trail as "a long and winding trail made by natives").

⁵⁶ See Log Notes, *supra* note 47, at 17 (testimony of Bryan Taylor); Exhibit 2468 (admitted Feb. 1, 2016).

⁵⁷ See Log Notes, *supra* note 47, at 17 (testimony of Bryan Taylor) (stating that although the author and date of the manuscript map appear to have been "chewed by shrews," the map exists in a collection drawn by Chief Nicolai from the Knik area).

⁵⁸ See *id.* The other red line on the map was a proposed railroad line that was never built in this location. See *id.*; Exhibit 2468.

also testified that the map was likely created prior to 1912, which the Court finds credible.⁵⁹

35. The ARC's realignment work on the Knik to Susitna portion of the "winter trail" "was completed on November 2, 1912,"⁶⁰ and by 1921 the ARC had spent approximately \$8,500 on Route 20A.⁶¹

36. Although the old "winter trail" started out as an Alaska Native trading route, Mr. Taylor testified that miners and trappers used Route 20A differently after gold was found in Willow Creek, Iditarod, and Nome.⁶² Mr. Taylor testified that peak use of Route 20A likely occurred between roughly 1914 through 1919.⁶³ Mr. Taylor also testified that the area of "Iditarod," which was connected to Knik by Route 20A, had a population of around 2,500 people in 1908.⁶⁴ Although some users traveled by dogsled, Mr. Taylor testified that many less-affluent travelers went by foot.⁶⁵ Route 20A was the preferred mail route from Knik to Susitna after construction.⁶⁶

37. The parties agree that the ARC constructed Route 20A. However, the parties disagree as to the exact location of the trail. This is complicated by the existence of the old "winter trail," which was sometimes referred to as the same "Knik to Susitna" name. Additionally, because Route 20A has been in existence for over one hundred years, the first users of the trail were unable to testify.

⁵⁹ See Log Notes, *supra* note 47, at 17 (testimony of Bryan Taylor).

⁶⁰ Exhibit 2261, at 3.

⁶¹ Exhibit 2265 (admitted Jan. 19, 2016) ("Last expenditure in fiscal year 1918;").

⁶² See generally Bryan Taylor's Testimony (Feb. 1-5, 2016) (referencing Exhibit 2461 (admitted Feb. 1, 2016); Exhibit 2462 (admitted Feb. 1, 2016); Exhibit 2463 (admitted Feb. 1, 2016); Exhibit 2465 (admitted Feb. 1, 2016); Exhibit 2466; Exhibit 2468; Exhibit 2469 (admitted Feb. 2, 2016)).

⁶³ See generally Bryan Taylor's Testimony (Feb. 1-5, 2016).

⁶⁴ See Log Notes, CD 502, Log No. 8:36:43, at 3 (Feb. 2, 2016) (testimony of Bryan Taylor); *see also* Exhibit 2393, at 8.

⁶⁵ See Exhibit 2393, at 8; *see generally* Bryan Taylor's Testimony (Feb. 1-5, 2016).

⁶⁶ See generally Bryan Taylor's Testimony (Feb. 1-5, 2016).

38. Mr. Lang, relying in part on a 1911 BLM Survey,⁶⁷ a 1923 ARC map,⁶⁸ and a 1942 draft Army Corps of Engineers map,⁶⁹ testified that in his opinion Route 20A was constructed north of the property.⁷⁰ However, there is no evidence that the trail identified by Mr. Lang as Route 20A continued west to Susitna Station in a straight line as suggested.⁷¹ In fact, Mr. Lang could not find any portion of that trail continuing on to Susitna Station, which was the terminus of the ARC's Route 20A.⁷² Furthermore, the Court finds that the maps Mr. Lang relied on in reaching his opinion are unreliable in determining trail locations.⁷³

39. Ms. Tilton testified she reviewed the same 1911 BLM Survey as Mr. Lang and determined that the old Knik to Susitna portion of the "winter trail" from Seward to Nome is represented in those documents.⁷⁴ This is consistent with the timing the ARC's construction of Route 20A. The old "winter trail," listed on the survey as a "Government trail from Knik towards Susitna," was surveyed on July 17, 1911.⁷⁵ Because construction on the ARC's Route 20A did not begin until 1912, the location of that trail would not have been noted in the 1911 BLM Survey.⁷⁶

40. In reaching his opinion that Route 20A was constructed north of Plaintiffs' property, Mr. Lang also relied on his own observations of Plaintiffs' property from site visits in August of 2015. Mr. Lang testified that Defendants' alleged location of Route 20A did not appear to have been made according to the ARC's

⁶⁷ Exhibit 1040 (admitted Jan. 19, 2016).

⁶⁸ Exhibit 2346 (admitted Feb. 2, 2016) (duplicate of Exhibit 1019 (admitted Jan. 12, 2016)).

⁶⁹ Exhibit 2405 (admitted Feb. 5, 2016) (duplicate of Exhibit 1041 (admitted Jan. 19, 2016)).

⁷⁰ See generally Jonathon Lang's Testimony (Jan. 19-21, 2016; Mar. 22, 2016).

⁷¹ See Exhibit 2452 (admitted Jan. 25, 2016).

⁷² See Log Notes, CD 502, Log No. 8:39:18, at 8-10 (Mar. 22, 2016) (testimony of Jonathon Lang).

⁷³ See *supra* Findings of Fact, ¶¶ 23-27.

⁷⁴ Exhibit 1040, at 33-34 (noting the existence of a "Government trail from Knik towards Susitna" on July 17, 1911); see generally Karen Tilton's Testimony (Feb. 5, 2016; Feb. 8, 2016).

⁷⁵ Exhibit 1040, at 33-34.

⁷⁶ See Exhibit 2261, at 1 (indicating that construction had not begun on Route 20A until after July 31, 1912); see generally Bryan Taylor's Testimony (Feb. 1-5, 2016).

specifications, i.e., the trail was not eight-feet wide.⁷⁷ Mr. Lang testified that he did not see evidence of a trail that wide when he visited Plaintiffs' property to observe the alleged location of Route 20A which was constructed over one hundred years before.⁷⁸

41. Mr. Beard-Weber testified that he was able to locate a three-foot wide trail on the ground, and that LiDAR⁷⁹ imagery indicated that the trail was anywhere from six-feet to fourteen-feet wide.⁸⁰ Mr. Beard-Weber also presented testimony that contradicted Mr. Lang. Mr. Beard-Weber testified that he was able to locate the alleged location of Route 20A by looking "up instead of down," to see a void where taller trees should be located.⁸¹ Mr. Beard-Weber testified that looking for the absence of tall trees is a typical way of locating old trails, and that doing so on Plaintiffs' property yielded a straight line that he could follow.⁸² Mr. Beard-Weber also testified that certain features, like tree blazes, can be hard to find in old trails.⁸³ Overall, Mr. Beard-Weber testified that in comparison to other trails that have had thirty years of nonuse, this was one of the easier trails for him to locate.⁸⁴

42. The topography of the region also helps explain the location of the ARC's realignment of the Knik to Susitna trail. Route 20A crosses Ninemile Ridge at Ninemile Hill. Ninemile Hill is the lowest point of the ridge, which runs north to south.⁸⁵ Other trails and roads that cross Ninemile Ridge, like Moore Road and later Homestead Road, are steeper and therefore less desirable for users.⁸⁶

⁷⁷ Exhibit 1034, at 13; *see generally* Jonathon Lang's Testimony (Jan. 19-21, 2016; Mar. 22, 2016).

⁷⁸ *See generally* Jonathon Lang's Testimony (Jan. 19-21, 2016; Mar. 22, 2016).

⁷⁹ "LiDAR" is essentially an aerial image that "strips away" trees and brush so that you can better see the topography of the area in question. *See* Log Notes, CD 502, Log No. 8:29:30, at 4 (Jan. 22, 2016) (testimony of "Rocky" Beard-Weber).

⁸⁰ *See* Log Notes, *supra* note 37, at 14 (testimony of "Rocky" Beard-Weber).

⁸¹ *See* Log Notes, *supra* note 79, at 11 (testimony of "Rocky" Beard-Weber).

⁸² *See id.* (testimony of "Rocky" Beard-Weber).

⁸³ *See* Log Notes, CD 502, Log No. 8:37:26, at 5 (Jan. 25, 2016) (testimony of "Rocky" Beard-Weber).

⁸⁴ *See id.* (testimony of "Rocky" Beard-Weber).

⁸⁵ *See* Exhibit 2225 (admitted Jan. 21, 2016).

⁸⁶ *See infra* Findings of Fact, Part II: The "historic Iditarod Trail," Sections F-H; Findings of Fact, Part III: Homestead Road, Section C.

E. The ARC's "Abandonment" of Route 20A

43. Shortly after the ARC completed Route 20A, the use of the trail declined.⁸⁷ Much of this decline can be attributed to the construction of the railroad and new spur roads going from the railroad.⁸⁸

44. In 1921, the ARC "abandoned" Route 20A.⁸⁹ Specifically, Route 20A was one of eleven ARC sub-projects that were "abandoned or superseded by preferable routes resulting from the change in the general transportation situation following the construction of the Government Railroad."⁹⁰ This abandonment showed up soon thereafter on the ARC's map of the Cook Inlet District in 1923.⁹¹

45. Mr. Taylor testified that after the ARC "abandoned" Route 20A, the trail was no longer used as a mail route. Mr. Taylor testified that there is not "a whole lot" of evidence of Route 20A being used in the 1920's. However, Mr. Taylor also testified that although Route 20A was no longer maintained by the ARC, hunters and trappers continued to use the trail.⁹²

46. Mr. Taylor testified that the term "abandonment" was used loosely by the ARC, and that it only meant that no more funds would be expended on the route for the relevant time period. A decision by the ARC to "abandon" a route therefore did not mean that the ARC would not expend funds on the route at a later date. For example, Mr. Taylor testified that Route 20B, a route over Rainey Pass, was listed by the ARC as abandoned at one point in time because no funds were allocated to

⁸⁷ See generally Bryan Taylor's Testimony (Feb. 1-5, 2016).

⁸⁸ See Exhibit 1207, at 1 (admitted Jan. 19, 2016) (noting that some ARC projects "have been abandoned or superseded by preferable routes resulting from the change in the general transportation situation following the construction of the Government Railroad"); see generally Bryan Taylor's Testimony (Feb. 1-5, 2016); Karen Tilton's Testimony (Feb. 5, 2016; Feb. 8, 2016).

⁸⁹ Exhibit 1207, at 1.

⁹⁰ *Id.*

⁹¹ Exhibit 1019 (listing an "abandoned trail" in a straight line from Knik to Susitna Station).

⁹² See generally Bryan Taylor's Testimony (Feb. 1-5, 2016).

the trail for maintenance. Then in 1928, the ARC decided to expend funds to maintain Route 20B because of a change in the transportation network.⁹³

47. Ms. Tilton corroborated Mr. Taylor's testimony by testifying that the ARC did not have a formal process for abandoning routes, beyond ceasing to expend funds, until the 1950's.⁹⁴ Mr. Lang stated that the earliest definition of abandonment he could find for the ARC was created in the 1950's.⁹⁵

F. The "historic Iditarod Trail" from 1921 to 1967

i. Location

48. Starting in 1939, there are aerial photos that show Plaintiffs' property and the existence of a trail Defendant argues is the Knik to Susitna portion of the "historic Iditarod Trail."⁹⁶

49. A large number of aerial photos were admitted into evidence over the course of this trial. The "historic Iditarod Trail" can be hard to see in many of these photos for a number of reasons. For example, the "historic Iditarod Trail" was primarily a winter trail, and so aerial photographs taken in the summer make it harder to see.⁹⁷ The "historic Iditarod Trail" is also relatively narrow, and the quality and angle of the camera lenses used can make a big difference.⁹⁸ Aircraft altitude can also impact the visibility of the "historic Iditarod Trail."⁹⁹ With that

⁹³ See generally *id.*

⁹⁴ See generally Karen Tilton's Testimony (Feb. 5, 2016; Feb. 8, 2016). The formal policy outlining the process for abandoning routes was not adopted until August 16, 1950. Exhibit 2164 (admitted Jan. 20, 2016).

⁹⁵ See Exhibit 1042 (admitted Jan. 19, 2016); see generally Jonathon Lang's Testimony (Jan. 19-21, 2016; Mar. 22, 2016).

⁹⁶ See Exhibit 2513 (admitted Mar. 21, 2016); Exhibit 2514 (admitted Mar. 21, 2016); Exhibit 2515 (admitted Mar. 21, 2016); Exhibit 2516 (admitted Mar. 21, 2016). Despite accounts of travelers using the "historic Iditarod Trail" during the time immediately preceding the ARC's "abandonment" of Route 20A, these accounts alone do little to establish a specific trail location. See generally Bryan Taylor's Testimony (Feb. 1-5, 2016).

⁹⁷ See generally "Rocky" Beard-Weber's Testimony (Jan. 21-22, 2016; Jan. 25, 2016; Jan. 28-29, 2016; Mar. 21, 2016); Bryan O'Malley's Testimony (Feb. 12, 2016).

⁹⁸ See generally "Rocky" Beard-Weber's Testimony (Jan. 21-22, 2016; Jan. 25, 2016; Jan. 28-29, 2016; Mar. 21, 2016); Bryan O'Malley's Testimony (Feb. 12, 2016).

⁹⁹ See generally "Rocky" Beard-Weber's Testimony (Jan. 21-22, 2016; Jan. 25, 2016; Jan. 28-29, 2016; Mar. 21, 2016); Bryan O'Malley's Testimony (Feb. 12, 2016).

said, the vast majority of the Knik to Susitna portion of the “historic Iditarod Trail” is locatable using these aerial photographs.¹⁰⁰

50. Looking at the aerial photos, the “historic Iditarod Trail” is difficult to see on the majority of Plaintiffs’ property. However, all of the admitted aerial photographs show a trail entering Plaintiffs’ property from the east and exiting Plaintiffs’ property from the west as part of the continuous Knik to Susitna portion of the trail.¹⁰¹

51. Mr. Beard-Weber testified about aerial photographs from 1939, 1950, 1951, 1958, 1960, and 1962.¹⁰² Although the details in these images vary, Mr. Beard-Weber testified that these photographs all show segments of a trail entering Plaintiffs’ property in the east and exiting Plaintiffs’ property in the west.¹⁰³

52. Bryan O’Malley, a professional photogrammetrist¹⁰⁴ retained by Defendant, was qualified as an expert in photogrammetry in this case.¹⁰⁵ Mr. O’Malley testified about aerial photographs from 1950, 1951, 1960, and 1962.¹⁰⁶ Mr. O’Malley testified that of these four years, the aerial imagery from 1962 most clearly showed a trail entering Plaintiffs’ property in the east and exiting Plaintiffs’ property in the west.¹⁰⁷ Mr. O’Malley also testified that the 1962 aerial photos show the “historic Iditarod Trail” in the middle of Plaintiffs’ property.¹⁰⁸ Based on all of these images, Mr. O’Malley concluded that a trail entered Plaintiffs’ property in the east and exited Plaintiffs’ property in the west since at

¹⁰⁰ See generally “Rocky” Beard-Weber’s Testimony (Jan. 21-22, 2016; Jan. 25, 2016; Jan. 28-29, 2016; Mar. 21, 2016); Bryan O’Malley’s Testimony (Feb. 12, 2016).

¹⁰¹ See generally “Rocky” Beard-Weber’s Testimony (Jan. 21-22, 2016; Jan. 25, 2016; Jan. 28-29, 2016; Mar. 21, 2016); Bryan O’Malley’s Testimony (Feb. 12, 2016).

¹⁰² See generally “Rocky” Beard-Weber’s Testimony (Jan. 21-22, 2016; Jan. 25, 2016; Jan. 28-29, 2016; Mar. 21, 2016).

¹⁰³ See generally *id.*

¹⁰⁴ A photogrammetrist uses a blend of aerial photos to create a three-dimensional map. See Log Notes, CD 502, Log No. 8:36:16, at 1-2 (Feb. 12, 2016) (testimony of Bryan O’Malley).

¹⁰⁵ See *id.* at 3.

¹⁰⁶ See generally Bryan O’Malley’s Testimony (Feb. 12, 2016).

¹⁰⁷ Exhibit 2503 (admitted Feb. 12, 2016); see generally Bryan O’Malley’s Testimony (Feb. 12, 2016).

¹⁰⁸ Exhibit 2503, at 3; see generally Bryan O’Malley’s Testimony (Feb. 12, 2016).

least 1950.¹⁰⁹ Mr. O'Malley was not asked to review the aerial photographs from 1939 and 1958.¹¹⁰

53. Mr. O'Malley testified that, in his opinion, the aerial photographs show a trail going through Plaintiffs' property that is six to eight-feet wide, plus or minus three feet.¹¹¹

54. Mr. Lang also reviewed the aerial photographs from 1939, 1950, 1951, 1958, 1960, and 1962.¹¹² Mr. Lang testified that he could not see any trail features running through Plaintiffs' property.¹¹³ Mr. Lang testified that if the ARC created an eight-foot trail that went across Plaintiffs' property, he expects that he would be able to see said trail from these aerial photographs.¹¹⁴ Mr. Lang compared the alleged location of the "historic Iditarod Trail" with Burma Road and other roads in the area that are visible in the aerial photographs.¹¹⁵

55. USGS topographic maps were also admitted throughout the trial. Although Mr. Beard-Weber testified that USGS topographic maps alone are not very accurate for determining an exact location of a trail on the ground, they can be a great starting point.¹¹⁶

56. One of these maps, the USGS Anchorage quadrangle topographic map printed in 1954 and 1958 (base 1953), was publicly available at the time Cowart filed for his homestead in 1958.¹¹⁷ This USGS map shows two trails going west out of Knik, with the northern one labeled as "Iditarod Trail."¹¹⁸ However, that

¹⁰⁹ See Log Notes, *supra* note 104, at 4 (testimony of Bryan O'Malley); see also Exhibit 2503.

¹¹⁰ See generally Bryan O'Malley's Testimony (Feb. 12, 2016).

¹¹¹ See Log Notes, *supra* note 104, at 15 (testimony of Bryan O'Malley).

¹¹² See generally Jonathon Lang's Testimony (Jan. 19-21, 2016; Mar. 22, 2016).

¹¹³ See Log Notes, *supra* note 43, at 3 (testimony of Jonathon Lang); Log Notes, *supra* note 72, at 1-2 (testimony of Jonathon Lang).

¹¹⁴ See Log Notes, *supra* note 43, at 3 (testimony of Jonathon Lang); Log Notes, *supra* note 72, at 1-2 (testimony of Jonathon Lang).

¹¹⁵ See generally Jonathon Lang's Testimony (Jan. 19-21, 2016; Mar. 22, 2016).

¹¹⁶ See Log Notes, *supra* note 29, at 5 (testimony of "Rocky" Beard-Weber).

¹¹⁷ See Exhibit 2225.

¹¹⁸ *Id.*

northern trail is depicted as ending in a marsh, and the southern trail goes though Sevenmile lake and across Plaintiffs' property.¹¹⁹

57. Ms. Tilton testified that this northern "Iditarod Trail" route listed in the USGS's 1953 quadrangle topographic map likely came from a 1942 draft Army map which showed a trail from Knik going to Stephan Lake.¹²⁰ The 1942 draft Army map likely listed this trail because of the 1911 BLM Survey which noted the old Knik to Susitna trail before the ARC's realignment in 1912.¹²¹ The northern route was omitted in future maps, while the trail going through Plaintiffs' property remained.¹²²

58. The USGS's 1974 (base 1958) Tyonek quadrangle topographic map shows the western part of the Knik to Susitna trail, which links up with the trail that goes through Plaintiffs' property.¹²³

59. Ms. Tilton also testified that survey notes from a 1964 Plat Survey noted a trail as being the "Old Iditarod dog sled trail" about a mile east of Plaintiffs' property.¹²⁴ Although the survey did not indicate that the trail existed on Plaintiffs' property,¹²⁵ Ms. Tilton testified that this omission is not significant because the trail may have been obscured by recent clearings in that location.¹²⁶

60. Ms. Tilton testified about aerial photographs from 1950, 1951, 1960, and 1962. Based on these aerial photos, survey data, and USGS maps, Ms. Tilton

¹¹⁹ See *id.*

¹²⁰ Exhibit 2405; see generally Karen Tilton's Testimony (Feb. 5, 2016; Feb. 8, 2016).

¹²¹ See generally Bryan Taylor's Testimony (Feb. 1-5, 2016); Karen Tilton's Testimony (Feb. 5, 2016; Feb. 8, 2016).

¹²² See generally Karen Tilton's Testimony (Feb. 5, 2016; Feb. 8, 2016).

¹²³ See Exhibit 2415 (admitted Jan. 25, 2016); see generally "Rocky" Beard-Weber's Testimony (Jan. 21-22, 2016; Jan. 25, 2016; Jan. 28-29, 2016; Mar. 21, 2016); Karen Tilton's Testimony (Feb. 5, 2016; Feb. 8, 2016).

¹²⁴ Exhibit 2255, at 49 (admitted Jan. 20, 2016) ("55.82: Center line dirt road, bears E, and W."); see also *id.* at 50.

¹²⁵ See generally Exhibit 2255.

¹²⁶ See generally Karen Tilton's Testimony (Feb. 5, 2016; Feb. 8, 2016).

testified that in her opinion the “historic Iditarod Trail” was in existence and crossed Plaintiffs’ property since at least 1950.¹²⁷

61. Mr. Lang emphasized how other maps, like the 1923 ARC map and the 1942 draft Army map, show the “Iditarod Trail” as going in a more northern route.¹²⁸ Although these maps may indicate where the old Knik to Susitna trail was before the ARC realigned the route in 1912, the Court is not persuaded by these maps alone that the “historic Iditarod Trail” did not cross Plaintiffs’ property at that time.¹²⁹ This is also true of the 1951 ARC map, which Ms. Tilton testified incorrectly showed the old northern route.¹³⁰

ii. Use

62. Although locals continued to use and maintain the “historic Iditarod Trail”¹³¹ after the ARC “abandoned” Route 20A in 1921, the level of use occurred at a lower level than it had during its peak in the years immediately after construction.¹³²

63. Giving examples of continued use of the “historic Iditarod Trail,” Mr. Taylor testified about an Alaska Native man named Art Theodore in the Sevenmile Lake area who used the trail, the Irving Reed party who reported seeing trappers on the trail, and Lee and Grace Ellexson who owned and worked at roadhouses along the route.¹³³

64. Ms. Dickson also testified about Art Theodore’s account of trail use, noting that his description did not include parts of the “historic Iditarod Trail” to the west

¹²⁷ See Log Notes, *supra* note 44, at 10 (testimony of Karen Tilton); see also Exhibit 2234.

¹²⁸ See generally Jonathon Lang’s Testimony (Jan. 19-21, 2016; Mar. 22, 2016).

¹²⁹ See *supra* Findings of Fact, ¶¶ 23-27.

¹³⁰ See Log Notes, CD 502, Log No. 8:34:16, at 11 (Feb. 8, 2016) (testimony of Karen Tilton); Exhibit 1109 (admitted Jan. 12, 2016).

¹³¹ See *supra* Findings of Fact, ¶ 33.

¹³² See generally Bryan Taylor’s Testimony (Feb. 1-5, 2016); Karen Tilton’s Testimony (Feb. 5, 2016; Feb. 8, 2016).

¹³³ See generally Bryan Taylor’s Testimony (Feb. 1-5, 2016). Lee Ellexson used to be a mail carrier along the ARC’s Route 20A. See generally *id.*

of Sevenmile Lake.¹³⁴ However, the Court does not find Ms. Dickson's observation to be particularly helpful, since one person may not have a need or desire to use an entire existing trail.¹³⁵

65. Charles "Chuck" Sassara Jr. testified during this trial in the form of a videotaped deposition.¹³⁶ Beginning in the 1950's, dog mushers in the area began using the "historic Iditarod Trail" to train for dog sled races. Specifically, Mr. Sassara testified that he would run sled dogs on the "historic Iditarod Trail" starting in 1956, and that he would occasionally run into other mushers on the trail.¹³⁷ One of these mushers was Joe Redington Sr., who would frequently haul large freight sleds along the "historic Iditarod Trail" to his homestead on Flathorn Lake.¹³⁸ Mr. Redington Sr. utilized the trail because it was the only east-west trail in the area at the time.¹³⁹

66. During the winters of 1956 and 1957, Mr. Sassara testified that when he used the "historic Iditarod Trail" leaving Burma Road to train dogs, he would do so two or three times a week.¹⁴⁰

67. During the 1950's and 1960's, users of the Knik to Susitna portion of the "historic Iditarod Trail" included at least Mr. Redington Sr., Dick Mackey, Lee Ellexson, Mr. Sassara, Clem Tellman, Stanley Collins, Hal Cluster, Bob Bacon, Al Hibbard, and Ed Carney.¹⁴¹ The "historic Iditarod Trail" was the main route from Knik to Susitna until seismic lines were constructed starting in the late 1950's.¹⁴²

¹³⁴ See Log Notes, *supra* note 72, at 20 (testimony of Kelly Dickson).

¹³⁵ See *id.* (testimony of Kelly Dickson) (agreeing that just because someone drives their car to Wasilla and back does not mean that the highway ends in Wasilla).

¹³⁶ See generally "Chuck" Sassara's Videotaped Deposition (Jan. 29, 2016; Feb. 1, 2016).

¹³⁷ See generally *id.*

¹³⁸ See generally *id.*; Bryan Taylor's Testimony (Feb. 1-5, 2016).

¹³⁹ See generally "Chuck" Sassara's Videotaped Deposition (Jan. 29, 2016; Feb. 1, 2016); Bryan Taylor's Testimony (Feb. 1-5, 2016); Dick Mackey's Videotaped Deposition (Feb. 8-9, 2016).

¹⁴⁰ See generally "Chuck" Sassara's Videotaped Deposition (Jan. 29, 2016; Feb. 1, 2016).

¹⁴¹ See generally Bryan Taylor's Testimony (Feb. 1-5, 2016).

¹⁴² See generally *id.*

Even after these seismic lines were put in, the Knik to Susitna portion of the “historic Iditarod Trail” was still used by dog mushers.¹⁴³

68. Jerry Wertzbaugher, whose family homesteaded the property directly north of the Plaintiffs’ property, also testified at trial.¹⁴⁴ Mr. Wertzbaugher testified that he first walked the “historic Iditarod Trail” crossing Plaintiffs’ property in 1960. Mr. Wertzbaugher recalls it being an old trail that appeared to have received a lot of use. He recounts the beaten path as generally being U-shaped and approximately 2 to 3 feet wide. Vegetation was cleared on both sides.¹⁴⁵

69. Dick Mackey also testified during the trial.¹⁴⁶ Mr. Mackey was able to identify from aerial photographs the location of the “historic Iditarod Trail” as it crosses Plaintiffs’ property.¹⁴⁷

G. Use of the “historic Iditarod Trail” After 1967

70. Starting in 1967, the Knik to Susitna portion of the “historic Iditarod Trail” was used for sled dog races. The first of these races was the 1967 Centennial Race, which was a precursor to the Anchorage to Nome Iditarod sled dog race.¹⁴⁸ The Centennial Race started in Knik, “follow[ed] the historic Iditarod [T]rail for 11 miles,” and ended in Big Lake.¹⁴⁹

71. Mr. Mackey and Mr. Redington Sr. both helped clear the trail for the 1967 Centennial Race.¹⁵⁰ Mr. Mackey testified that he helped clear the route for the race in December of 1966.¹⁵¹ Mr. Mackey was able to identify the location of this “historic Iditarod Trail” that was used in this and subsequent races and how it

¹⁴³ See generally “Chuck” Sassara’s Videotaped Deposition (Jan. 29, 2016; Feb. 1, 2016); Bryan Taylor’s Testimony (Feb. 1-5, 2016).

¹⁴⁴ See generally Jerry Wertzbaugher’s Testimony (Feb. 9-10, 2016).

¹⁴⁵ See generally *id.*

¹⁴⁶ See generally Dick Mackey’s Videotaped Deposition (Feb. 8-9, 2016).

¹⁴⁷ See generally *id.*

¹⁴⁸ See generally Bryan Taylor’s Testimony (Feb. 1-5, 2016).

¹⁴⁹ Exhibit 2490 (admitted Feb. 2, 2016).

¹⁵⁰ See generally Bryan Taylor’s Testimony (Feb. 1-5, 2016); Dick Mackey’s Videotaped Deposition (Feb. 8-9, 2016).

¹⁵¹ See generally Dick Mackey’s Videotaped Deposition (Feb. 8-9, 2016).

crossed Plaintiffs' property.¹⁵² Mr. Taylor also testified that the 1967 Centennial race ran out of Knik and to Burma Road by crossing Plaintiffs' property.¹⁵³

72. Vernon Cherneski, who has been involved with mushing in the Knik area since 1965, testified during the trial.¹⁵⁴ Mr. Cherneski testified that the 1967 Centennial Race was run on the "historic Iditarod Trail," which was the primary route out of Knik going from east to west.¹⁵⁵

73. After the 1967 Centennial Race, the Knik to Susitna portion of the "historic Iditarod Trail" continued to be used by dog mushers.¹⁵⁶ Part of this is because it was the only trail going from east to west in the area.¹⁵⁷

74. Although there was no race in 1968, Mr. Mackey testified that the same route that was used in the 1967 Centennial Race was used again for the 1969 race.¹⁵⁸

75. William Cotter, a musher that used to live in the Knik area from 1971 to 1982, also testified at trial.¹⁵⁹ Mr. Cotter testified that the Knik to Susitna portion of the "historic Iditarod Trail" was the only trail going from east to west in the vicinity of Sevenmile Lake, and that everybody called it the Iditarod Trail at the time. Mr. Cotter testified that he used to use the trail on the Knik to Susitna portion of the "historic Iditarod Trail," roughly once a week during weekdays and on the weekends for training. Mr. Cotter also testified that in addition to this

¹⁵² See Exhibit 2007 (admitted Jan. 15, 2016); see generally Dick Mackey's Videotaped Deposition (Feb. 8-9, 2016).

¹⁵³ See Log Notes, *supra* note 64, at 10 (testimony of Bryan Taylor).

¹⁵⁴ See Log Notes, CD 502, Log No. 8:58:45, at 24-25 (Feb. 11, 2016).

¹⁵⁵ See *id.* at 24 (testimony of Vernon Cherneski).

¹⁵⁶ See generally Bryan Taylor's Testimony (Feb. 1-5, 2016); Dick Mackey's Videotaped Deposition (Feb. 8-9, 2016).

¹⁵⁷ See generally "Chuck" Sassara's Videotaped Deposition (Jan. 29, 2016; Feb. 1, 2016); Dick Mackey's Videotaped Deposition (Feb. 8-9, 2016).

¹⁵⁸ See generally Dick Mackey's Videotaped Deposition (Feb. 8-9, 2016).

¹⁵⁹ See Log Notes, CD 502, Log No. 9:13:56, at 3 (Feb. 3, 2016).

training, the Knik to Susitna portion of the “historic Iditarod Trail” was used for about eight to ten races each year.¹⁶⁰

76. Raymond (“Ray”) Redington Jr., a musher and grandson of Mr. Redington Sr., testified at trial.¹⁶¹ Mr. Redington Jr. also testified that the “historic Iditarod Trail” is the only route that goes from east to west out of Knik.¹⁶²

77. Mr. Taylor also testified that mushers would use the Knik to Susitna portion of the “historic Iditarod Trail” for training.¹⁶³

78. Mr. Mackey testified that the same Knik to Susitna portion of the “historic Iditarod Trail” that was used in the 1967 Centennial Race was also used in the 1973 inaugural race to Nome. The Iditarod sled dog race continued to use this trail, including for the 1978 race which Mr. Mackey won. Mr. Mackey and several other mushers also testified that the sled dogs always follow the same trail. Mr. Mackey testified that he and other mushers would use the trail for training and that he worked to maintain the trail for races.¹⁶⁴

79. Mr. Mackey testified to physical evidence on the Knik to Susitna portion of the “historic Iditarod Trail” as well. Specifically, Mr. Mackey described an old block and tackle, located in a tree and partially grown over just east of Plaintiffs’ property as evidence of the trail’s historic use related to lowering heavy freight sleds down Ninemile Hill.¹⁶⁵

80. Mr. Wertzbaugher testified that it was common knowledge that the “historic Iditarod Trail” crossed Plaintiffs’ property. Mr. Wertzbaugher testified that he skied on the “historic Iditarod Trail” for the first time from his family’s homestead to Knik and back with his ex-wife in 1974. This trip with his ex-wife took approximately four to five hours and covered eleven miles. Mr.

¹⁶⁰ See generally William Cotter’s Testimony (Feb. 3, 2016).

¹⁶¹ See Log Notes, *supra* note 154, at 16.

¹⁶² See generally “Ray” Redington Jr.’s Testimony (Feb. 11, 2016).

¹⁶³ See generally Bryan Taylor’s Testimony (Feb. 1-5, 2016).

¹⁶⁴ See generally Dick Mackey’s Videotaped Deposition (Feb. 8-9, 2016).

¹⁶⁵ See generally *id.*

Wertzbaugher also testified that he observed the 1975 Iditarod sled dog race go across Plaintiffs' property along with co-workers. After 1975, Mr. Wertzbaugher testified that he continued to watch races on the trail as well as use the trail. Mr. Wertzbaugher also testified that he would occasionally take guests to his family's homestead and show them the "historic Iditarod Trail." Mr. Wertzbaugher testified that he never observed any "no trespassing" signs on Plaintiffs' property.¹⁶⁶

81. Footage of the 1975 Iditarod sled dog race was admitted at trial.¹⁶⁷ Mr. Taylor testified that, based on this footage, the 1975 Iditarod sled dog race crossed Plaintiffs' property.¹⁶⁸ Mr. O'Malley also testified that the 1975 Iditarod sled dog race crossed Plaintiffs' property, which was identifiable because of some unique man-made clearings consistent with those located on Plaintiffs' property.¹⁶⁹

82. Viewing the footage, Mr. Wertzbaugher confirmed that the 1975 Iditarod sled dog race went through Plaintiffs' property, and even indicated where he and his co-workers likely watched the mushers race by.¹⁷⁰ Mr. Cotter testified that he was one of the participants of the 1975 Iditarod sled dog race, and that the footage showed the location of the "historic Iditarod Trail" crossing Plaintiffs' property.¹⁷¹

83. Dee Dee Jonrowe, a professional dog musher who has been mushing dogs since 1978, also testified during the trial.¹⁷² Ms. Jonrowe testified that the Iditarod sled dog race used to start from Knik, go across Sevenmile Lake, went up and over Ninemile Hill, and then went through the woods to Burma Road. After reaching Burma Road, Ms. Jonrowe testified that the trail continued on west to Susitna. Ms. Jonrowe also testified that the earlier Iditarod sled dog races were not well marked. Ms. Jonrowe testified that her first Iditarod sled dog race was in 1980.

¹⁶⁶ See generally Jerry Wertzbaugher's Testimony (Feb. 9-10, 2016).

¹⁶⁷ Exhibit 2378 (admitted Feb. 2, 2016).

¹⁶⁸ See Log Notes, *supra* note 64, at 18 (testimony of Bryan Taylor).

¹⁶⁹ See generally Bryan O'Malley's Testimony (Feb. 12, 2016).

¹⁷⁰ See generally Jerry Wertzbaugher's Testimony (Feb. 9-10, 2016).

¹⁷¹ See generally William Cotter's Testimony (Feb. 3, 2016).

¹⁷² See Log Notes, CD 502, Log No. 8:44:07, at 16 (Feb. 10, 2016).

Ms. Jonrowe also testified about the mechanics of dog mushing and the use of sled brakes and ice hooks. Ms. Jonrowe testified that sled brakes typically float behind the sled unless pressure is applied by the musher pushing it down into the snow.¹⁷³

84. Lesli Schick, an employee in the Iditarod Trails Unit within DNR, testified at trial.¹⁷⁴ Both Ms. Schick and Mr. Beard-Weber testified that they observed ruts consistent with sled brakes on Plaintiffs' property in the location of the Knik to Susitna portion of the "historic Iditarod Trail."¹⁷⁵

85. Mr. Taylor testified about *State v. Carpentier*, a 1969 case concerning Burma Road.¹⁷⁶ Mr. Taylor recalled that in *Carpentier*, Al Hibbard testified that the "historic Iditarod Trail" was accessible from Burma Road and was used by those traveling and racing by dog sled.¹⁷⁷ Mr. Taylor also testified about a number of articles written at the time of various races supporting the use of the "historic Iditarod Trail" around Plaintiff's property.¹⁷⁸ Both Mr. Taylor and Ms. Schick testified that dozens of sanctioned races used the "historic Iditarod Trail" crossing Plaintiffs' property.¹⁷⁹ This is despite the fact that some of the races were cancelled (and later rescheduled).¹⁸⁰

H. Mr. Cowart Posts "No Trespassing" Signs on his Property in the Location of the "historic Iditarod Trail"

86. In 1978, Congress dedicated portions of the historic Seward to Nome Trail as the "Iditarod National Historic Trail,"¹⁸¹ which is distinct from the "historic

¹⁷³ See generally Dee Dee Jonrowe's Testimony (Feb. 10, 2016).

¹⁷⁴ See Log Notes, CD 502, Log No. 9:13:04, at 1-2 (Feb. 16, 2016).

¹⁷⁵ See Log Notes, *supra* note 37, at 16-17 (testimony of "Rocky" Beard-Weber); see generally Lesli Schick's Testimony (Feb. 16, 2016).

¹⁷⁶ See generally Bryan Taylor's Testimony (Feb. 1-5, 2016) (citing *State v. Carpentier*, 62-237-CI (Alaska Super. Ct. 1969)).

¹⁷⁷ See Log Notes, *supra* note 64, at 8 (testimony of Bryan Taylor).

¹⁷⁸ See Exhibit 2257 (admitted Feb. 2, 2016); Exhibit 2389 (admitted Feb. 2, 2016); Exhibit 2390 (admitted Feb. 2, 2016); Exhibit 2489 (admitted Feb. 2, 2016); Exhibit 2490; see generally Bryan Taylor's Testimony (Feb. 1-5, 2016).

¹⁷⁹ See generally Bryan Taylor's Testimony (Feb. 1-5, 2016); Lesli Schick's Testimony (Feb. 16, 2016).

¹⁸⁰ See generally Bryan Taylor's Testimony (Feb. 1-5, 2016).

¹⁸¹ See National Parks and Recreation Act of 1978, Pub. L. No. 95-625, § 551, 92 Stat. 3467, 3517 (1978); see also Exhibit 2418, at 4.

Iditarod Trail.”¹⁸² In 1979, a survey (ASLS 79-14) of the historic route was completed from Knik to Goose Creek, which stops before Plaintiffs’ property.¹⁸³ Ms. Tilton testified that this ASLS 79-14 Survey depicts the same portion of the old Knik to Susitna trail as surveyed in the 1911 BLM Survey.¹⁸⁴

87. In 1983, a survey (ASLS 83-001) was completed on public lands from Goose Creek to Susitna Station, which covers the general area where Plaintiffs’ property is located.¹⁸⁵ Ms. Schick testified that the ASLS 83-001 survey generally followed the route of the “historic Iditarod Trail.”¹⁸⁶ Mr. Mackey also testified that the ASLS 83-001 survey generally followed the “historic Iditarod Trail” route, since he and Mr. Redington Sr. worked to identify the route on public lands for the survey.¹⁸⁷

88. Plaintiffs’ property, which was privately owned land, was excluded from the survey.¹⁸⁸ However, ASLS 83-001 clearly indicates that the “Iditarod National Historic Trail” is located on public lands both directly east and west of Plaintiffs’ property.¹⁸⁹ Both ASLS 79-14 and ASLS 83-001 followed the “historic Iditarod Trail” as closely as possible on public lands,¹⁹⁰ and delineate the location of a 300 to 400-foot wide easement for the “Iditarod National Historic Trail.”¹⁹¹

89. In November of 1983, Mr. Cowart was sent a letter discussing “the historic route of the Iditarod Trail as established by the Alaska Road Commission . . . [which] was established using historic documents, interviews with persons

¹⁸² See *supra* Findings of Fact, ¶ 21.

¹⁸³ See Exhibit 2269 (admitted Jan. 22, 2016); Exhibit 2282 (admitted Feb. 12, 2016).

¹⁸⁴ See generally Karen Tilton’s Testimony (Feb. 5, 2016; Feb. 8, 2016).

¹⁸⁵ Exhibit 2283 (admitted Jan. 20, 2016).

¹⁸⁶ See generally Lesli Schick’s Testimony (Feb. 16, 2016).

¹⁸⁷ See generally Dick Mackey’s Videotaped Deposition (Feb. 8-9, 2016).

¹⁸⁸ See Exhibit 2283, at 4.

¹⁸⁹ *Id.*

¹⁹⁰ See Exhibit 2293, at 2 (admitted Jan. 21, 2016).

¹⁹¹ See Exhibit 2418, at 25; see also Exhibit 2283, at 2.

familiar with the trail location, aerial reconnaissance, aerial photo interpretation and on-site field location of blaze trees, trail artifacts and trail remains.”¹⁹²

90. After receiving this letter, Mr. Cowart appears to have blocked the “historic Iditarod Trail” as it crossed his property. On December 19, 1983, Mr. Cowart sent a letter to the Iditarod Trail Blazers and Iditarod Mushers for the 1984 race, stating that his property “is posted and trespassing will not be permitted.”¹⁹³

91. On January 5, 1984, the Frontiersman newspaper reported that “a no-trespass order by private land owner Benjamin Cowart will force the [Iditarod sled dog] race to detour from the original Iditarod Trail.”¹⁹⁴ This was likely in response to both Mr. Cowart’s 1983 letter and Mr. Cowart placing a metal post blocking the trail with a sign saying “POSTED,” “PRIVATE PROPERTY,” and “NO TRESPASSING.”¹⁹⁵ The metal post was placed in the center of the trail where the “historic Iditarod Trail” entered his property on the eastern boundary of the homestead.¹⁹⁶ That metal post with the “NO TRESPASSING” sign remains on Plaintiffs’ property today.¹⁹⁷

92. In response to Mr. Cowart blocking the “historic Iditarod Trail” across his property, the Iditarod sled dog race began using Homestead Road to reach Burma Road.¹⁹⁸

93. Ms. Dickson testified that Mr. Cowart placed the post and “NO TRESPASSING” sign on the “historic Iditarod Trail” at an earlier date, back in 1981. Ms. Dickson testified that Mr. Cowart placed the sign after Ridge Road was put in along the section line to the north of Plaintiffs’ property.¹⁹⁹

¹⁹² Exhibit 2293, at 2; *see also id.* at 1. The Court notes that the letter has a few mistakes, including the year the ARC realigned the Knik to Susitna Trail in the form of Route 20A and the spelling of “Redington.” *Id.* at 2.

¹⁹³ Exhibit 1139 (admitted Jan. 12, 2016).

¹⁹⁴ Exhibit 2257.

¹⁹⁵ Exhibit 2372, at 1-3 (admitted Jan. 22, 2016).

¹⁹⁶ *See id.*

¹⁹⁷ *Id.*

¹⁹⁸ *See* Exhibit 2257; *infra* Findings of Fact, Part III: Homestead Road, Section C. Exhibit 2257 refers to Homestead Road as “Kerber Road.” Exhibit 2257; *see supra* Findings of Fact, ¶ 18.

¹⁹⁹ *See generally* Kelly Dickson’s Testimony (Jan. 11-13, 2016; Mar. 22, 2016).

94. Ms. DeFusco, one of the Plaintiffs in this case, also testified at trial.²⁰⁰ Ms. DeFusco testified that she believed Mr. Cowart placed the post and “NO TRESPASSING” sign on the “historic Iditarod Trail,” around 1981 to coincide with the construction of Ridge Road.²⁰¹ The Court finds her testimony to generally be biased and self-interested.

95. Other than Ms. Dickson’s and Ms. DeFusco’s testimony, there is no other evidence that Mr. Cowart placed the “NO TRESPASSING” sign to block the “historic Iditarod Trail” on Plaintiffs’ property in 1981.²⁰² The Court notes that both of the Plaintiffs were attending college outside of Alaska at the time they believe Mr. Cowart placed the post and “NO TRESPASSING” sign in the location of the “historic Iditarod Trail.”²⁰³ In contrast, the news article from 1984, the ASLS 83-001 survey, and the letters sent in late 1983 indicate that it is more likely that Mr. Cowart placed the post and “NO TRESPASSING” sign in either late 1983 or 1984.

96. Since Mr. Cowart placed the “NO TRESPASSING” sign along the “historic Iditarod Trail” on Plaintiffs’ property, there has been little use along that route since 1984.

I. The Matanuska-Susitna Borough Vacates the “Iditarod National Historic Trail” to the Section Line

97. The 1983 survey (ASLS 83-001) determined the location of the “Iditarod National Historic Trail,” creating 300 to 400-foot wide easements on public lands.²⁰⁴ However, it quickly became apparent that the “Iditarod National Historic Trail” as designated by the survey would not work “to establish a permanent

²⁰⁰ See Log Notes, CD 502, Log No. 8:41:11, at 16 (Jan. 14, 2016).

²⁰¹ See generally Donna DeFusco’s Testimony (Jan. 14-15, 2016).

²⁰² See generally Kelly Dickson’s Testimony (Jan. 11-13, 2016; Mar. 22, 2016); Donna DeFusco’s Testimony (Jan. 14-15, 2016).

²⁰³ See generally Kelly Dickson’s Testimony (Jan. 11-13, 2016; Mar. 22, 2016); Donna DeFusco’s Testimony (Jan. 14-15, 2016).

²⁰⁴ See Exhibit 2283; see also Exhibit 2418, at 25 (“All public lands between Kijik and Finger Lake have been surveyed to date. Right-of-way width, where established, ranges from 300 to 400 feet.”).

routing of the trail.”²⁰⁵ This is because the patchwork of public and private lands in the area of the survey made the “Iditarod National Historic Trail” discontinuous.²⁰⁶ This is in contrast to the “historic Iditarod Trail,” a continuous trail that went from Seward to Nome.²⁰⁷

98. Because of the desire to create a continuous “Iditarod National Historic Trail,” the Alaska Department of Transportation (“DOT”) petitioned the Matanuska-Susitna (“Mat-Su”) Borough to vacate some of the 300 to 400-foot wide easements identified in ASLS 83-001.²⁰⁸ Instead of connecting the discontinuous parts of the “Iditarod National Historic Trail” by going through private land, DOT suggested vacating some of these unconnected segments and moving the 300 to 400-foot easement to the section lines.²⁰⁹ Doing so would create a continuous route that would be historically preserved.²¹⁰

99. In 1986, the Mat-Su Borough vacated portions of the 300 to 400-foot wide easement for the “Iditarod National Historic Trail,” including the segments east and west of Plaintiffs’ property.²¹¹ ASLS 83-001 only surveyed public lands to determine the location of the “Iditarod National Historic Trail.”²¹² There was no mention about vacating a possible R.S. 2477.²¹³ The vacation did not apply to any easements on Plaintiffs’ property.²¹⁴

100. In 2009, DNR sent a letter to property owners in the area of where the Mat-Su Borough vacated the “Iditarod National Historic Trail” to the section line asking them if they were interested in voluntarily creating a conservation easement

²⁰⁵ Exhibit 1009, at 1 (admitted Jan. 12, 2016); *see also id.* at 17.

²⁰⁶ *See* Exhibit 2283, at 4; *see also* Exhibit 1009, at 22; Exhibit 1178 (admitted Jan. 12, 2016).

²⁰⁷ *See generally* Bryan Taylor’s Testimony (Feb. 1-5, 2016).

²⁰⁸ *See* Exhibit 1009, at 12; *see also* Exhibit 1096 (admitted Jan. 12, 2016).

²⁰⁹ *See* Exhibit 1009, at 1-2; *see also* Exhibit 1146 (admitted Jan. 12, 2016).

²¹⁰ *See* Exhibit 1009 at 45 (“The intent is to utilize Section Line Easements keeping the Iditarod Trail as continuous as possible.”); *see also id.* (“The State of Alaska is working with the Iditarod Trail Committee in an effort to relocate the trail making the dedicated trail as continuous as possible.”); Exhibit 2418.

²¹¹ *See generally* Exhibit 1009.

²¹² *Id.* at 22; *see also* Exhibit 1178.

²¹³ *See generally* Exhibit 1009.

²¹⁴ *Id.* at 22; *see also* Exhibit 1178.

over their private lands for the “Iditarod National Historic Trail.”²¹⁵ The existence or non-existence of a voluntary conservation easement for the “Iditarod National Historic Trail” has no bearing on whether an R.S. 2477 easement exists along the “historic Iditarod Trail” across Plaintiffs’ property.

J. The Alaska State Legislature Creates RST 118

101. In 1998, the Alaska State Legislature enacted AS 19.30.400, which identified over 600 R.S. 2477 trails throughout Alaska.²¹⁶ Although the statute was not necessary for creating and asserting an R.S. 2477 easement, the statute nevertheless stated that “[t]he state claims, occupies, and possesses each [R.S. 2477] right-of-way . . . that was accepted either by the state or the territory of Alaska or by public users.”²¹⁷ AS 19.30.400 also noted that “[t]he failure to include or identify a right-of-way . . . does not relinquish any right, title, or interest the public has in a right-of-way.”²¹⁸

102. AS 19.30.400 identified R.S. 2477 rights-of-way by using DNR’s “Historic Trails Database,” which refers to each trail with a specific RST number.²¹⁹ The “Knik–Susitna” right-of-way was listed and identified in AS 19.30.400(d) as RST 118.²²⁰ The Cowart family was sent notice of this designation in 1999, along with an unsurveyed route of RST 118 which indicates that it crosses Plaintiffs’ property.²²¹

103. Even though DNR never recorded the R.S. 2477 interests against private property owners, Mr. Beard-Weber testified that there is no recording requirement

²¹⁵ Exhibit 1027 (admitted Jan. 11, 2016).

²¹⁶ AS 19.30.400.

²¹⁷ AS 19.30.400(a).

²¹⁸ AS 19.30.400(c).

²¹⁹ AS 19.30.400(d).

²²⁰ *Id.*

²²¹ Exhibit 2385 (admitted Jan. 22, 2016).

for the State to assert an R.S. 2477 right.²²² Mr. Beard-Weber testified that RST 118 follows the “historic Iditarod Trail.”²²³

104. Although there has been little use on the “historic Iditarod Trail” as it crosses Plaintiffs’ property since 1984, recent images from Google Earth taken in the winter indicate the existence of the trail on Plaintiffs’ property.²²⁴

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²²² See generally “Rocky” Beard-Weber’s Testimony (Jan. 21-22, 2016; Jan. 25, 2016; Jan. 28-29, 2016; Mar. 21, 2016).

²²³ See generally *id.*

²²⁴ Exhibit 2451 (admitted Jan. 25, 2016); see also Exhibit 2234.

III. Homestead Road

A. The Creation of Homestead Road by Mr. Sassara

105. Mr. Sassara testified that his “recollection” was that he “probably” built Homestead Road²²⁵ in the summer of 1958 with a D8 CAT.²²⁶ Mr. Sassara testified that he did not begin constructing Homestead Road until May or June because he had to wait for the ground to thaw. Once he began construction, Mr. Sassara testified that it could have taken him as long as six months to finish the road. Mr. Sassara testified that throughout that summer, he hired Edward Schenker to help finish Homestead Road in one season.²²⁷

106. Mr. Sassara testified that the blade of the D8 CAT he used to build Homestead Road was approximately 9-feet wide.²²⁸ Mr. Beard-Weber testified that the width of Homestead Road as he measured it on the ground was nine-feet wide.²²⁹ Mr. Beard-Weber also testified that the LiDAR imagery recorded a width in the range of twelve to twenty feet.²³⁰

107. Mr. Sassara’s parents and his uncle both filed Homestead applications in November of 1958.²³¹ Mr. Sassara built Homestead Road with the intent to access these family homesteads.²³² When creating Homestead Road, Mr. Sassara testified that he started from Burma Road to reach his parent’s and uncle’s homestead.²³³ Homestead Road ultimately connects with the Old Homesteader and Goose Bay Roads to the southeast of the Sassara family homesteads.²³⁴

²²⁵ Mr. Sassara repeatedly referred to Homestead Road as “Burma Road” in his deposition, which may be confusing to someone reviewing Mr. Sassara’s testimony. *See supra* note 29.

²²⁶ *See generally* “Chuck” Sassara’s Videotaped Deposition (Jan. 29, 2016; Feb. 1, 2016).

²²⁷ *See generally id.*

²²⁸ *See generally id.*

²²⁹ *See* Log Notes, *supra* note 83, at 8 (testimony of “Rocky” Beard-Weber).

²³⁰ *See id.* (testimony of “Rocky” Beard-Weber).

²³¹ *See* Exhibit 2058.

²³² *See generally* “Chuck” Sassara’s Videotaped Deposition (Jan. 29, 2016; Feb. 1, 2016).

²³³ *See generally id.*

²³⁴ *See generally id.*; Bryan Taylor’s Testimony (Feb. 1-5, 2016).

108. Mr. Sassara testified that he intended for Homestead Road to be used and treated as an ordinary road that other homesteaders in the area could use to access their homesteads.²³⁵ A number of other homesteaders filed homestead applications in 1959 and 1960 along Homestead Road.²³⁶ Mr. Taylor testified that Homestead Road likely made the land more attractive to homesteaders.²³⁷ Mr. Sassara characterized other homesteaders as “practically [following] in the exhaust fumes [of] the CAT.”²³⁸

109. The location and existence of Homestead Road since 1960 is not in dispute. Aerial photographs from 1960,²³⁹ 1962,²⁴⁰ 1972,²⁴¹ 1990,²⁴² current Google Earth imagery,²⁴³ maps in BLM homestead file records,²⁴⁴ and testimony of witnesses at trial all show that Homestead Road has existed across Plaintiffs’ property since at least 1960.²⁴⁵

110. Aerial photos of Plaintiffs’ property from 1958 do not show the existence of Homestead Road.²⁴⁶ Although the exact date of the 1958 aerial photographs are unknown, they were likely taken sometime in the summer, as there is visible foliage and the lakes do not appear to be frozen.²⁴⁷

²³⁵ See generally “Chuck” Sassara’s Videotaped Deposition (Jan. 29, 2016; Feb. 1, 2016).

²³⁶ Exhibit 2058.

²³⁷ See generally Bryan Taylor’s Testimony (Feb. 1-5, 2016).

²³⁸ See generally “Chuck” Sassara’s Videotaped Deposition (Jan. 29, 2016; Feb. 1, 2016).

²³⁹ Exhibit 2448 (admitted Jan. 20, 2016).

²⁴⁰ Exhibit 2254 (admitted Jan. 15, 2016).

²⁴¹ Exhibit 2256 (admitted Jan. 22, 2016).

²⁴² Exhibit 2258 (admitted Jan. 22, 2016).

²⁴³ Exhibit 2451, at 1.

²⁴⁴ See Exhibit 1168 (admitted Jan. 11, 2016).

²⁴⁵ See generally Kelly Dickson’s Testimony (Jan. 11-13, 2016; Mar. 22, 2016); Donna DeFusco’s Testimony (Jan. 14-15, 2016); Jonathon Lang’s Testimony (Jan. 19-21, 2016; Mar. 22, 2016); “Rocky” Beard-Weber’s Testimony (Jan. 21-22, 2016; Jan. 25, 2016; Jan. 28-29, 2016; Mar. 21, 2016); “Chuck” Sassara’s Videotaped Deposition (Jan. 29, 2016; Feb. 1, 2016); Bryan Taylor’s Testimony (Feb. 1-5, 2016); Karen Tilton’s Testimony (Feb. 5, 2016; Feb. 8, 2016); Bryan O’Malley’s Testimony (Feb. 12, 2016).

²⁴⁶ Exhibit 2531 (admitted Mar. 21, 2016).

²⁴⁷ *Id.* Both Mr. Lang and Mr. Beard-Weber testified that Homestead Road is not visible in the 1958 aerial photographs. See generally Jonathon Lang’s Testimony (Jan. 19-21, 2016; Mar. 22, 2016); “Rocky” Beard-Weber’s Testimony (Jan. 21-22, 2016; Jan. 25, 2016; Jan. 28-29, 2016; Mar. 21, 2016).

111. Mr. Taylor testified that there is other evidence to suggest Mr. Sassara may have constructed Homestead Road sometime after 1958.²⁴⁸

112. Ms. Schick testified that Ms. Dickson had told her back in 2008 that Mr. Cowart built Homestead Road.²⁴⁹ The Court does not find it credible that Mr. Cowart constructed Homestead Road.

B. Homestead Road Before the “historic Iditarod Trail” was Blocked

113. Through 1961, Mr. Sassara testified that he continued to maintain and improve Homestead Road with his D8 CAT. Mr. Sassara also testified that on at least two occasions he removed roadblocks that blocked access to his family’s homesteads via Homestead Road. Mr. Sassara said that he never received or asked for permission to construct or use Homestead Road.²⁵⁰

114. Mr. Sassara testified that his family’s use of Homestead Road was high until they were able to establish residency.²⁵¹ Mr. Sassara’s family was awarded their homestead patents in 1966.²⁵²

115. After residency was established on the family homesteads, Mr. Sassara testified that they would visit the properties once or twice a month during the summer.²⁵³

116. Mr. Sassara testified that the last time he drove down Homestead Road was sometime in the late 1960’s or early 1970’s. Mr. Sassara testified that his parents sold their homestead in the early 1980’s.²⁵⁴

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²⁴⁸ See generally Bryan Taylor’s Testimony (Feb. 1-5, 2016).

²⁴⁹ See generally Lesli Schick’s Testimony (Feb. 16, 2016).

²⁵⁰ See generally “Chuck” Sassara’s Videotaped Deposition (Jan. 29, 2016; Feb. 1, 2016).

²⁵¹ See generally *id.*

²⁵² Exhibit 2058.

²⁵³ See generally “Chuck” Sassara’s Videotaped Deposition (Jan. 29, 2016; Feb. 1, 2016).

²⁵⁴ See generally *id.*

117. In addition to Mr. Sassara and his family, other homesteaders also used Homestead Road to access the area.²⁵⁵ Both Ms. Dickson and Ms. DeFusco recall using Homestead Road in the 1970's and 1980's.²⁵⁶

118. Plaintiffs testified that Mr. Cowart gave permission for people to use Homestead Road.²⁵⁷ However, the Court finds that Plaintiffs' testimony was largely self-serving, biased, and contradictory regarding permissive use. The Court also notes that Plaintiffs were very young and largely absent during the relevant time period.²⁵⁸

C. Homestead Road from 1984 to 2008

119. By 1984, Mr. Cowart placed a metal post with a "NO TRESPASSING" sign on his property in the location of the "historic Iditarod Trail."²⁵⁹

120. In response, mushers had two alternate routes across Ninemile Ridge to reach Burma Road and the rest of the "historic Iditarod Trail." The first route was to take the section line at Moore Road north of the "historic Iditarod Trail," and the second was to take Homestead Road to the south.²⁶⁰

121. Because of the topography of Ninemile Ridge, Homestead Road was preferable to mushers because it crosses the ridge in a location with less of an incline than Moore Road.²⁶¹ Mr. Taylor testified that Homestead Road was the alternate route for races that could no longer use the "historic Iditarod Trail."²⁶²

122. Moore Road, located at the section line above Plaintiffs' property, has proven unsafe for dog teams. This is because the section line crosses Ninemile

²⁵⁵ See generally *id.*; Bryan Taylor's Testimony (Feb. 1-5, 2016).

²⁵⁶ See generally Kelly Dickson's Testimony (Jan. 11-13, 2016; Mar. 22, 2016); Donna DeFusco's Testimony (Jan. 14-15, 2016).

²⁵⁷ See generally Kelly Dickson's Testimony (Jan. 11-13, 2016; Mar. 22, 2016); Donna DeFusco's Testimony (Jan. 14-15, 2016).

²⁵⁸ See generally Kelly Dickson's Testimony (Jan. 11-13, 2016; Mar. 22, 2016); Donna DeFusco's Testimony (Jan. 14-15, 2016).

²⁵⁹ See *supra* Findings of Fact, Part II: The "historic Iditarod Trail," Section H.

²⁶⁰ See Exhibit 2347.

²⁶¹ See Exhibit 2225.

²⁶² See generally Bryan Taylor's Testimony (Feb. 1-5, 2016).

Ridge at a steep incline referred to as “Suicide Hill.”²⁶³ At the bottom of Suicide Hill is a vehicle intersection described as treacherous and difficult to stop, as dog sled brakes are not designed for roads or hard ground without snow.²⁶⁴ Dogs can become injured by being overrun by sleds that cannot stop when going down such steep descents.²⁶⁵

123. Starting with the 1984 Iditarod sled dog race, mushers began using Homestead Road to cross Plaintiffs’ property instead of the “historic Iditarod Trail.”²⁶⁶ Mr. Taylor testified that over one hundred races used Homestead Road as a race route in the winter.²⁶⁷ Ms. Schick also testified that hundreds of races have used Homestead Road where it crosses Plaintiffs’ property.²⁶⁸

124. Jon Brautigan, the vice-president of the Knik Trailblazers (a previous Defendant in this lawsuit), testified at trial.²⁶⁹ Mr. Brautigan testified that the Iditarod sled dog race route used Homestead Road starting in 1984 because the “historic Iditarod Trail” had been blocked. Mr. Brautigan testified that Homestead Road was a safer route than the section line at Moore Road because of the steepness of Ninemile Ridge.²⁷⁰

125. Terry Langholz, the president of the Knik Trailblazers (a previous Defendant in this lawsuit), testified at trial.²⁷¹ Mr. Langholz testified that Homestead Road has been used for numerous races over the years, and that it is safer for dog sleds than Moore Road.²⁷²

126. Mr. Redington Jr. testified that Homestead Road was used for the Iditarod sled dog race after the “historic Iditarod Trail” was blocked on Plaintiffs’

²⁶³ See generally *id.*; “Ray” Redington Jr.’s Testimony (Feb. 11, 2016).

²⁶⁴ See generally “Ray” Redington Jr.’s Testimony (Feb. 11, 2016).

²⁶⁵ See generally *id.*

²⁶⁶ See Exhibit 2257; see generally Bryan Taylor’s Testimony (Feb. 1-5, 2016).

²⁶⁷ See generally Bryan Taylor’s Testimony (Feb. 1-5, 2016).

²⁶⁸ See generally Lesli Schick’s Testimony (Feb. 16, 2016).

²⁶⁹ See Log Notes, *supra* note 172, at 23.

²⁷⁰ See generally Jon Brautigan’s Testimony (Feb. 10-11, 2016).

²⁷¹ See Log Notes, *supra* note 154, at 10.

²⁷² See generally Terry Langholz’s Testimony (Feb. 11, 2016).

property.²⁷³ Mr. Redington Jr. testified that the section line is much more dangerous for mushers than Homestead Road.²⁷⁴ Mr. Redington Jr. also testified that the section line is just as dangerous for mushers coming from Ridge Road.²⁷⁵ This is because “Suicide Hill” is so steep and the “trail” is shared by motor vehicle traffic.²⁷⁶ Mr. Redington Jr.’s testimony was corroborated by a number of others who talked about how unsafe the section line is for mushers.²⁷⁷

127. Virtually all of the mushers who testified said that they never asked for permission to use Homestead Road.²⁷⁸

128. Mr. Cherneski was the sole witness who testified that he thought Mr. Redington Sr. got permission from Mr. Cowart to use Homestead Road.²⁷⁹ The Court does not find this testimony to be credible because he was not present for the alleged conversation, did not remember any details of what may have been said, and Mr. Redington Sr.’s grandson testified that he did not know of anyone who ever asked Mr. Cowart for permission to use Homestead Road.²⁸⁰

129. There was other evidence presented at trial which indicates that Mr. Cowart did not give permission to use Homestead Road. Ms. Dickson testified that from the time of her earliest memories, Mr. Cowart posted hand-painted no trespassing signs along the property.²⁸¹ Mr. Cowart fought the right-of-way for Burma Road across his property in the *Carpentier* case in the 1960’s.²⁸² Additionally, in 2000,

²⁷³ See generally “Ray” Redington, Jr.’s Testimony (Feb. 11, 2016).

²⁷⁴ See generally *id.*

²⁷⁵ See generally *id.* Mr. Redington Jr. specifically testified that getting to Moore Road from Ridge Road was very difficult to do with a dog team, since it is a “ninety-degree turn with a stop sign.” See Log Notes, *supra* note 154, at 20 (testimony of “Ray” Redington Jr.).

²⁷⁶ See generally “Ray” Redington, Jr.’s Testimony (Feb. 11, 2016).

²⁷⁷ See Exhibit 2424 (admitted Feb. 11, 2016); see generally “Rocky” Beard-Weber’s Testimony (Jan. 21-22, 2016; Jan. 25, 2016; Jan. 28-29, 2016; Mar. 21, 2016); Terry Langholz’s Testimony (Feb. 11, 2016); Lesli Schick’s Testimony (Feb. 16, 2016).

²⁷⁸ See generally Dee Dee Jonrowe’s Testimony (Feb. 10, 2016); Jon Brautigan’s Testimony (Feb. 10-11, 2016); Terry Langholz’s Testimony (Feb. 11, 2016); “Ray” Redington Jr.’s Testimony (Feb. 11, 2016).

²⁷⁹ See generally Vernon Cherneski’s Testimony (Feb. 11, 2016).

²⁸⁰ See generally “Ray” Redington Jr.’s Testimony (Feb. 11, 2016); Vernon Cherneski’s Testimony (Feb. 11, 2016).

²⁸¹ See Log Notes, CD 502, Log No. 9:02:58, at 13 (Jan. 11, 2016) (testimony of Kelly Dickson).

²⁸² See generally Bryan Taylor’s Testimony.

Mrs. Cowart expressly denied permission to a group of trail riders that sought to use the property.²⁸³

D. Homestead Road After 2008

130. In 2008, after Ms. Dickson became the owner of 160 acres of what used to be her parents' property, Ms. Dickson testified that she noticed Homestead Road appearing to cross her property via Google Earth.²⁸⁴

131. On August 2, 2008, Ms. Dickson testified that she flew to Alaska and blocked Homestead Road as it entered and exited her property.²⁸⁵ Ms. Dickson testified that she blocked the trail by felling trees, placing "NO TRESPASSING" signs, and tying brightly-colored tape across the property.²⁸⁶

132. On August 5, 2008, an attorney for Ms. Dickson sent a one-page letter to her neighbors stating that Ms. Dickson has blocked Homestead Road and that any use of the property "is not authorized, and constitutes a trespass."²⁸⁷

133. After blocking Homestead Road, Ms. Dickson contacted DNR to find out whether Homestead Road is a portion of the "historic Iditarod Trail."²⁸⁸ At the time, Ms. Dickson told DNR that that her father had built Homestead Road.²⁸⁹

134. On October 1, 2008, a DNR employee sent a memorandum to Ms. Dickson stating that "[t]he trail that Ms. Dickson has blocked, is not, in fact, the historic [Iditarod] trail."²⁹⁰ This memorandum also stated that "[i]t is the State's position that Ms. Dickson has legally blocked an unauthorized, or unprotected, trail across

²⁸³ Exhibit 1011 (admitted Jan. 12, 2016); *see also* Exhibit 1010 (admitted Jan. 12, 2016).

²⁸⁴ *See generally* Kelly Dickson's Testimony (Jan. 11-13, 2016; Mar. 22, 2016).

²⁸⁵ *See generally id.*

²⁸⁶ *See* Exhibit 2367, at 23-26 (admitted Jan. 14, 2016); *see generally* Kelly Dickson's Testimony (Jan. 11-13, 2016; Mar. 22, 2016).

²⁸⁷ Exhibit 1114, at 2 (admitted Jan. 11, 2016).

²⁸⁸ Exhibit 1008, at 1 (admitted Jan. 11, 2016); *see generally* Kelly Dickson's Testimony (Jan. 11-13, 2016; Mar. 22, 2016).

²⁸⁹ *See generally* Kelly Dickson's Testimony (Jan. 11-13, 2016; Mar. 22, 2016); Lesli Schick's Testimony (Feb. 16, 2016).

²⁹⁰ Exhibit 1008, at 1.

her property.”²⁹¹ The memorandum concluded that “the trail that is blocked lies south of the historic easement for the Iditarod.”²⁹²

135. Although Ms. Dickson blocked Homestead Road as it crosses her property, the blockage was soon pushed aside and Homestead Road continued to be used.²⁹³ Ms. Dickson testified that she continued to try and block Homestead Road by planting trees and placing a sign on a post in concrete in the middle of the road.²⁹⁴ Despite Ms. Dickson’s efforts, public use of Homestead Road continued.²⁹⁵

136. In 2011, Ms. Dickson installed game cameras to monitor the use of Homestead Road, resulting in hundreds of photographs showing a variety of public uses, including snowmachines, bicycles, hunters, hikers, ATVs, highway vehicles, skiers, and dog mushers.²⁹⁶ Ms. Dickson testified that use of Homestead Road likely decreased after she installed the cameras and no trespassing signs.²⁹⁷ However, the majority of these photos were taken after Ms. Dickson agreed to remove the blockages in 2012.²⁹⁸

137. Homestead Road is also used by landowners in the area. For many of these landowners, this is the only access they have to their property. There is no right-of-way from Ridge Road to connect to Homestead Road.²⁹⁹

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²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ See generally Lesli Schick’s Testimony (Feb. 16, 2016).

²⁹⁴ See generally Kelly Dickson’s Testimony (Jan. 11-13, 2016; Mar. 22, 2016).

²⁹⁵ See generally Lesli Schick’s Testimony (Feb. 16, 2016).

²⁹⁶ Exhibit 2121 (admitted Jan. 13, 2016); Exhibit 2427 (admitted Feb. 16, 2016); Exhibit 2428 (admitted Feb. 16, 2016); Exhibit 2429 (admitted Feb. 16, 2016); Exhibit 2430 (admitted Feb. 16, 2016); Exhibit 2431 (admitted Feb. 16, 2016); Exhibit 2432 (admitted Feb. 16, 2016); Exhibit 2433 (admitted Feb. 16, 2016); Exhibit 2434 (admitted Feb. 16, 2016); Exhibit 2435 (admitted Feb. 16, 2016); Exhibit 2512 (admitted Mar. 21, 2016).

²⁹⁷ See generally Kelly Dickson’s Testimony (Jan. 11-13, 2016; Mar. 22, 2016).

²⁹⁸ See generally *id.*

²⁹⁹ See generally Bryan Taylor’s Testimony (Feb. 1-5, 2016); Lesli Schick’s Testimony (Feb. 16, 2016).

CONCLUSIONS OF LAW

I. Defendant Bears the Burden of Proving the Existence of Rights-of-Way Across Plaintiffs' Property by Clear and Convincing Evidence

1. Defendant bears the burden in this case to prove the existence of rights-of-way across Plaintiffs' property by clear and convincing evidence.³⁰⁰ The clear and convincing evidence standard means that the finder of fact must be persuaded that the claim is highly probable.³⁰¹

II. The Court Finds by Clear and Convincing Evidence that the "historic Iditarod Trail"³⁰² as it Crosses Plaintiffs' Property Is an R.S. 2477

A. The Law of R.S. 2477 Rights-of-Way

i. Acceptance of an R.S. 2477 Grant

2. In Section 8 of the Mining Law of 1866, Congress created what are now referred to as R.S. 2477 easements.³⁰³ Until its repeal 110 years later in 1976, R.S. 2477 granted "the right of way for the construction of highways over public lands, not reserved for public uses."³⁰⁴

3. R.S. 2477 rights-of-way were "self-executing . . . [and] automatically came into existence if a public highway was established across public land in accordance to the law of Alaska."³⁰⁵ "To effect the grant of a[n R.S. 2477] right-of-way, either the public or the appropriate state authorities must [have] take[n] positive action" prior to its repeal in 1976.³⁰⁶

³⁰⁰ Interior Trails Pres. Coal. v. Swope, 115 P.3d 527, 530 (Alaska 2005); see San Juan Cnty., Utah v. United States, 2:04-CV-0552BSJ, 2011 WL 2144762, at *5 (D. Utah May 27, 2011); see also *Idiotic, Inc. v. Igiugig Lodge, LLC*, 3AN-10-09848-CI, Findings of Fact and Conclusions of Law, at 36 (Alaska Super. Ct. Jan. 25, 2013), in Plaintiffs' Point Brief: RS 2477, Exhibit A (Apr. 8, 2016).

³⁰¹ Purcella v. Olive Kathryn Purcella Trust, 325 P.3d 987, 992 (Alaska 2014).

³⁰² Although the Court refers to this trail as the "historic Iditarod Trail," the name has no bearing on whether an R.S. 2477 exists across Plaintiffs' property.

³⁰³ Act of July 26, 1866, Ch. 262, § 8, 14 Stat. 251, 253 (1866) (codified at 43 U.S.C. § 932), repealed by Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94-579, § 706(a), 90 Stat. 2734, 2793 (1976).

³⁰⁴ *Id.*

³⁰⁵ Price v. Eastham, 75 P.3d 1051, 1055 (Alaska 2003) (*Price I*) (citation and quotation omitted).

³⁰⁶ *Id.* (citing Dillingham Commercial Co. v. City of Dillingham, 705 P.2d 410, 413 (Alaska 1985)).

4. An R.S. 2477 grant could have been accepted prior to 1976 in one of two ways. The first form of acceptance was through public use, where “the public . . . use[d] the land ‘for such a period of time and under such conditions as to prove that the grant has been accepted.’”³⁰⁷ “To determine whether sufficient public use exists to establish an R.S. 2477 right-of-way, courts usually consider two factors: evidence of use and evidence of the route’s definite character.”³⁰⁸ The second form of acceptance occurred when “appropriate public authorities of the state . . . act[ed] in a way that clearly manifest[ed] their intention to accept the grant.”³⁰⁹

5. The establishment of R.S. 2477 rights-of-way was “[u]nlike any other federal land statute.”³¹⁰ Accepting an R.S. 2477 right-of-way “required no administrative formalities: no entry, no application, no license, no patent, and no deed on the federal side; no formal act of public acceptance on the part of the states or localities in whom the right was vested.”³¹¹ An “R.S. 2477 ‘was a standing offer of a free right of way over the public domain,’” and could “be accepted ‘without formal action by public authorities.’”³¹²

6. R.S. 2477 rights-of-way could only be accepted across unreserved, unappropriated federal land.³¹³ Consequently, any valid R.S. 2477 right-of-way across Plaintiffs’ property must have been accepted prior to when Mr. Cowart filed a homestead application on November 25, 1958.³¹⁴

7. R.S. 2477 rights-of-way could be accepted for “highways over public land.”³¹⁵ “[R]oute[s] did not] need to be significantly developed to qualify as a

³⁰⁷ *Id.* (citing *Hamerly v. Denton*, 359 P.2d 121, 123 (Alaska 1961)).

³⁰⁸ *Id.* at 1056 (citation omitted).

³⁰⁹ *Id.* at 1055 (citing *Hamerly*, 359 P.2d at 123).

³¹⁰ *S. Utah Wilderness Alliance v. Bureau of Land Mgmt.*, 425 F.3d 735, 741 (10th Cir. 2005).

³¹¹ *Id.*

³¹² *Id.* (citations omitted).

³¹³ *See Price I*, 75 P.3d, at 1055-56.

³¹⁴ *Id.* at 1056; *Hamerly*, 359 P.3d at 125 (“When a citizen has made a valid entry under the homestead laws, the portion covered by the entry is then segregated from the public domain.”); *see* Exhibit 2286.

³¹⁵ *See* Act of July 26, 1866, Ch. 262, § 8, 14 Stat. at 253.

'highway' for RS 2477 purposes; even a rudimentary trail [could] qualify."³¹⁶ Nor did R.S. 2477 rights-of-way require continuous use to have been established.³¹⁷ Furthermore, "[w]hat might be considered sporadic use in another context would be consistent or constant use in Alaska."³¹⁸

8. To show the acceptance of an R.S. 2477 right-of-way, Defendant must "show that there was a generally-followed route across the land in question."³¹⁹ "[T]he precise path" of an R.S. 2477 does not need to be proven.³²⁰

ii. *Width of an R.S. 2477*

9. Although the issue has never been decided, the Court treats the scope of an R.S. 2477 right-of-way as being controlled by State law.³²¹ In this case, no State laws existed prior to when Mr. Cowart filed a homestead application on November 25, 1958.³²²

10. Two federal orders set the width of public highways in Alaska prior to the enactment of AS 19.10.015 in 1963.³²³ AS 19.10.015 codified the widths outlined in the two federal orders.

11. The 1949 Public Land Order ("PLO") 601 set 300-foot easements for "Through Roads," 200-foot easements for "Feeder Roads," and 100-foot easements for "Local Roads."³²⁴ "Local Roads" were defined in PLO 601 as "[a]ll

³¹⁶ *Fitzgerald v. Puddicombe*, 918 P.2d 1017, 1020 (Alaska 1996) (citing *Shultz v. Dep't of Army, U.S.*, 10 F.3d 649, 655-56 (9th Cir. 1993); *Dillingham Commercial Co.*, 705 P.2d at 414).

³¹⁷ *Id.*

³¹⁸ *Id.* (citing *Shultz*, 10 F.3d at 655); *but see id.* (citing *Hamerly*, 359 P.3d at 125) ("[I]nfrequent and sporadic use is not sufficient to establish public acceptance of the [R.S. 2477] grant[.]" (internal quotation marks omitted)).

³¹⁹ *Id.* at 1021-22 (citing *Shultz*, 10 F.3d at 655).

³²⁰ *Id.* at 1021.

³²¹ *See id.* at 1019 (holding that R.S. 2477 rights-of-way "come into existence automatically if a public highway was established across public land *in accordance with the law of Alaska*" (emphasis added)); *see also* *Puddicombe v. Fitzgerald*, Nos. S-8421, S-8342, 1999 WL 33958803, at *1 (Alaska Aug. 25, 1999) ("The scope of an RS 2477 grant is subject to state law." (citations omitted)).

³²² Exhibit 2286.

³²³ *See* AS 19.10.015.

³²⁴ Public Land Order 601, 14 Fed. Reg. 5048, 5048-49 (1949) [hereinafter PLO 601]; *see also* *State v. Alaska Land Title Ass'n*, 667 P.2d 714, 718 n.4 (Alaska 1983).

roads not classified above as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior.”³²⁵

12. In 1951, the Department of the Interior issued Department Order (“DO”) 2665 “to fix the width of all public highways in Alaska established or maintained under [its] jurisdiction.”³²⁶ DO 2665 also sought to create uniformity among Alaska’s public highways.³²⁷ DO 2665 defined local roads as being “[a]ll public roads not classified as through roads or feeder roads,” and it also established the width of such rights-of-way as being 100 feet.³²⁸

13. Because the trails at issue in this case are not defined as either “through roads” or “feeder roads” in PLO 601 or DO 2665, the Court finds that the scope of any valid R.S. 2477s across Plaintiffs’ property to be 100-foot wide.³²⁹

Alternatively, if AS 19.10.015 applies, the Court finds that the scope of any valid R.S. 2477s across Plaintiffs’ property to be 100-foot wide.³³⁰ Limiting the scope of an R.S. 2477 easement to anything less than a 100-foot wide right-of-way would make R.S. 2477 scope determinations more fact intensive, make the test similar to one for prescriptive easements, and go against long-standing State and Federal laws setting the width at 100 feet.³³¹

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³²⁵ PLO 601, *supra* note 324, at 5048-49. The Alaska Road Commission (“ARC”), which constructed Route 20A, became an entity of the Department of the Interior.

³²⁶ Department Order 2665, 16 Fed. Reg. 10,752, 10,752 (1951) [hereinafter DO 2665]; *see also Alaska Land Title Ass’n*, 667 P.2d at 719 n.5.

³²⁷ *See* DO 2665, *supra* note 326, at 10,752.

³²⁸ *Id.*

³²⁹ *See* PLO 601, *supra* note 324, at 5048-49; DO 2665, *supra* note 326, at 10,752.

³³⁰ *See* AS 19.10.015; *see also Puddicombe*, 1999 WL 33958803, at *1 (“The superior court did not err in holding that the [R.S. 2477] right-of-way should be 100 feet wide.”).

³³¹ *Id.*; PLO 601, *supra* note 324, at 5048-49; DO 2665, *supra* note 326, at 10,752; *see also Puddicombe*, 1999 WL 33958803, at *1. Although some States, like Utah, have decided to use a reasonable and necessary standard, they have done so based on the common law of that particular State. *See Sierra Club v. Hodel*, 848 F.2d 1068, 1083 (10th Cir. 1988), *overruled on other grounds by Vill. of Los Ranchos De Albuquerque v. Marsh*, 956 F.2d 970, 973 (10th Cir. 1992).

B. The "historic Iditarod Trail" as it Crosses Plaintiffs' Property Is an R.S. 2477

14. The Court finds by clear and convincing evidence that the "historic Iditarod Trail" as it crosses Plaintiffs' property is an R.S. 2477.

15. First, the Court finds by clear and convincing evidence that the "historic Iditarod Trail" as it crosses Plaintiffs' property is the same "generally-followed route" as the ARC's Route 20A.³³² Route 20A, constructed in 1912, constitutes a clear manifestation of the ARC's intent to accept the Congressional grant for an R.S. 2477.³³³

16. Notwithstanding the ARC's acceptance of the grant, the Court also finds by clear and convincing evidence that the "historic Iditarod Trail" as it crosses Plaintiffs' property was also accepted by public use.³³⁴ The Court finds by clear and convincing evidence that the public used the "historic Iditarod Trail" across Plaintiffs' property "for such a period of time and under such conditions as to prove that the grant has been accepted."³³⁵

17. Because the "historic Iditarod Trail" as it crosses Plaintiffs' property is an R.S. 2477, the scope of the right-of-way is 100 feet.³³⁶

18. The Court does not rely on DNR's RST 118 designation in reaching this decision. However, the Court finds by clear and convincing evidence that RST 118 as asserted by Defendant is an R.S. 2477 right-of-way as it crosses Plaintiffs' property.

19. Since the "historic Iditarod Trail" as it crosses Plaintiffs' property is an R.S. 2477, the Court does not reach the question of whether a prescriptive

³³² See *Fitzgerald*, 918 P.2d at 1021-22. Plaintiffs alleged that the "historic Iditarod Trail" as it crosses their property is a game trail. However, because of the linear nature of the trail, and the overwhelming abundance of evidence to the contrary, the Court finds that the "historic Iditarod Trail" is not a game trail. See *supra* Findings of Fact, Part II: The "historic Iditarod Trail," Sections D-G.

³³³ See *Price I*, 75 P.3d at 1055.

³³⁴ See *id.*

³³⁵ *Hamerly*, 359 P.2d at 123; see *supra* Findings of Fact, Part II: The "historic Iditarod Trail," Sections F, G.

³³⁶ See *supra* Conclusions of Law, ¶¶ 9-13.

easement exists across Plaintiffs' property in the location of the "historic Iditarod Trail."³³⁷

C. The R.S. 2477 of the "historic Iditarod Trail" as it Cross Plaintiffs' Property Has Not Been Abandoned or Vacated

i. The ARC Did Not Abandon the R.S. 2477 Easement

20. The Court does not find that the ARC's "abandonment" of Route 20A in 1921 abandoned the R.S. 2477 right-of-way for the "historic Iditarod Trail" as it crosses Plaintiffs' property.³³⁸ The ARC's decision to not spend any additional money on maintaining Route 20A did nothing to negate its clear intent to accept the grant of an R.S. 2477 easement.³³⁹

21. Even if the ARC did abandon Route 20A in 1921, the public's subsequent use of the "historic Iditarod Trail" across Plaintiffs' property constituted public acceptance of an R.S. 2477 grant.³⁴⁰ The Court is not persuaded that an "abandonment" by the ARC would prevent any future ability by the public to create an R.S. 2477 right-of way.³⁴¹ It would be an absurd conclusion to find that the public could not independently accept an R.S. 2477 easement after abandonment by public authorities.³⁴²

ii. The Mat-Su Borough Did Not Vacate the R.S. 2477 Easement

22. The Court does not find that the Mat-Su Borough's vacation of the "Iditarod National Historic Trail" vacated the R.S. 2477 right-of-way for the "historic Iditarod Trail" as it crosses Plaintiffs property.

23. Although the language used in the vacation documents in the 1980's may be imprecise and confusing, the Court does not find that either the Mat-Su

³³⁷ R.S. 2477 rights-of-way and public prescriptive easements are mutually exclusive.

³³⁸ See *supra* Findings of Fact, Part II: The "historic Iditarod Trail," Section E.

³³⁹ *Price I*, 75 P.3d at 1055 (citing *Hamerly*, 359 P.2d at 123).

³⁴⁰ See *supra* Findings of Fact, Part II: The "historic Iditarod Trail," Sections F, G.

³⁴¹ See BLACK'S LAW DICTIONARY 2 (10th ed. 2014) (defining "abandonment" as "[t]he relinquishing of a right or interest with the intention of never reclaiming it").

³⁴² See *supra* Findings of Fact, Part II: The "historic Iditarod Trail," Sections F, G.

Borough or the State vacated any rights-of-way on Plaintiffs' property for four reasons.

24. First, the Mat-Su Borough only vacated parts of the "Iditarod National Historic Trail," there was no mention about vacating any possible R.S. 2477.³⁴³ The Mat-Su Borough's decision to vacate a 300 to 400-foot wide "Iditarod Trail" easement did not automatically vacate other easements. Such a finding would greatly reduce the longevity and functionality of R.S. 2477 easements.

25. Second, the Mat-Su Borough only vacated segments of the "Iditarod National Historic Trail" as identified by ASLS 83-001.³⁴⁴ By design, the ASLS 83-001 survey specifically avoided any private land.³⁴⁵ Therefore, the Mat-Su Borough's vacation did not vacate any easements on private lands, including Plaintiffs' property.³⁴⁶

26. Third, the ASLS 83-001 survey that concerned the "Iditarod National Historic Trail" is not the same as the "historic Iditarod Trail." Although the location of the "Iditarod National Historic Trail" was intended to follow the "historic Iditarod Trail" as closely as possible, it was never inextricably intertwined or identical.³⁴⁷ Because the "Iditarod National Historic Trail" avoided private property, the 300 to 400-foot easements outlined by the ASLS 83-001 created discontinuous segments.³⁴⁸ In contrast, the "historic Iditarod Trail" is a continuous trail that went from Seward to Nome.³⁴⁹

27. Fourth, although the State could have relied on an R.S. 2477 easement for the "Iditarod National Historic Trail," the State declined to do so. This is because such an easement would "only [protect] public travel," and would not protect "the

³⁴³ See generally Exhibit 1009.

³⁴⁴ See Exhibit 1178; see generally Exhibit 1009.

³⁴⁵ See Exhibit 2283; see generally Kelly Dickson's Testimony (Jan. 11-13, 2016; Mar. 22, 2016).

³⁴⁶ See Exhibit 2283.

³⁴⁷ See *supra* Findings of Fact, ¶ 21.

³⁴⁸ Exhibit 2283.

³⁴⁹ See generally Bryan Taylor's Testimony (Feb. 1-5, 2016).

historic resource[],” as was intended by the “Iditarod National Historic Trail.”³⁵⁰ The purpose of the “Iditarod National Historic Trail,” a ceremonial trail for the preservation of the nation’s history, was broader and required larger easements than what an R.S. 2477 could provide.³⁵¹

28. In the end, the Mat-Su Borough’s vacation of the “Iditarod National Historic Trail” in the vicinity of Plaintiffs’ property concerned a legally distinct easement from the R.S. 2477 across Plaintiffs’ property. The R.S. 2477 easement along the “historic Iditarod Trail” existed long before Congress created the “Iditarod National Historic Trail.” Although there may have been segments of the “Iditarod National Historic Trail” near Plaintiffs’ property that were vacated to the section line, the Court finds that the Mat-Su Borough’s vacation had nothing to do with the R.S. 2477 across Plaintiffs’ property. A finding to the contrary would severely undercut the State’s rights and ability to maintain R.S. 2477 rights-of-way for public use.

D. The Court Does Not Find the Doctrines of Estoppel or Laches to Apply to the R.S. 2477 Across Plaintiffs’ Property

i. The Court Does Not Apply Equitable Estoppel

29. To prove estoppel against the State, Plaintiffs must show that (1) the State asserted a position by conduct or words; (2) Plaintiffs acted in reasonable reliance based on this position; (3) Plaintiffs suffered resulting prejudice; and (4) estopping the State’s action would serve the interest of justice so as to limit public injury.³⁵² To prevail, Plaintiff “must prove each element by clear and convincing

³⁵⁰ See Exhibit 2418; see generally Bryan Taylor’s Testimony (Feb. 1-5, 2016).

³⁵¹ See Exhibit 2418.

³⁵² Allen v. State, Dep’t of Health & Soc. Servs., Div. of Pub. Assistance, 203 P.3d 1155, 1164 (Alaska 2009) (citations omitted).

evidence.”³⁵³ Failure to prove the first of the factors defeats application of this defense and the Court need not consider any of the other elements.³⁵⁴

30. The Court finds that Plaintiffs have failed to prove by clear and convincing evidence that the State asserted any position by conduct or words to trigger the defense of equitable estoppel.

31. The ARC’s “abandonment” of Route 20A was merely a decision to not spend additional funds to maintain the trail.³⁵⁵ This decision was not an asserted position by the government to abandon the R.S. 2477. Similarly, the Mat-Su Borough’s vacation of the “Iditarod National Historic Trail” was not an asserted position by the government to vacate the R.S. 2477 across Plaintiffs’ property.³⁵⁶

32. The Court does not find DNR’s 2008 memorandum to be an asserted position by the government concerning the R.S. 2477 as it crosses Plaintiffs’ property. The primary purpose of DNR’s 2008 memorandum was to determine whether Homestead Road, which had been blocked by Ms. Dickson, was either the “Iditarod National Historic Trail” or the “historic Iditarod Trail.”³⁵⁷ This memorandum only “confirmed that the trail that is blocked lies south of the [“Iditarod National Historic Trail” and] . . . the alignment for the RS2477 Trail (RST 118).”³⁵⁸

33. Because the Court does not find by clear and convincing evidence that the State asserted any position by conduct or words, the Court need not consider any of the other elements for equitable estoppel.³⁵⁹

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³⁵³ Dressel v. Weeks, 779 P.2d 324, 329 (Alaska 1989).

³⁵⁴ Hidden Heights Assisted Living, Inc. v. State, Dep’t of Health & Soc. Servs., Div. of Health Care Servs., 222 P.3d 258, 268 (Alaska 2009).

³⁵⁵ See *supra* Findings of Fact, Part II: The “historic Iditarod Trail,” Section E; Conclusions of Law, ¶¶ 20-21.

³⁵⁶ See *supra* Findings of Fact, Part II: The “historic Iditarod Trail,” Section I; Conclusions of Law, ¶¶ 20-21.

³⁵⁷ Exhibit 1008, at 1.

³⁵⁸ *Id.*

³⁵⁹ Hidden Heights Assisted Living, Inc., 222 P.3d at 268.

ii. *The Court Does Not Apply Laches*

34. “The doctrine of laches ‘creates an equitable defense when a party delays asserting a claim for an unconscionable period’” and there is “resulting prejudice.”³⁶⁰ “[T]he State does not have to sue to establish its ownership of [a] right of way simply because problems *might* arise.”³⁶¹ In this case, Plaintiffs’ “challenge to the right of way [when they filed suit] . . . began the period of delay.”³⁶²

35. The Court does not find that laches applies to the R.S. 2477 right-of-way that crosses Plaintiffs’ property. A less than two-month delay is under no circumstances “unconscionable.”³⁶³ The State is under no obligation to vigorously defend all attempted blockages of R.S. 2477 rights-of-way.³⁶⁴ To require otherwise would place an unreasonable burden on the State.

III. The Court Does Not Find by Clear and Convincing Evidence that Homestead Road as it Crosses Plaintiffs’ Property Is an R.S. 2477

36. The Court does not find by clear and convincing evidence that Homestead Road as it crosses Plaintiffs’ property is an R.S. 2477 because Defendant has not shown by clear and convincing evidence that Homestead Road was constructed prior to Mr. Cowart’s homestead application on November 25, 1958.

37. An R.S. 2477 right-of-way can only exist if it was accepted across unreserved, unappropriated federal land.³⁶⁵ Therefore, for the Court to find that Homestead Road is an R.S. 2477 right-of-way, the Court needs to find by clear

³⁶⁰ *Offshore Systems—Kenai v. State, Dep’t of Transp. & Pub. Facilities*, 282 P.3d 348, 354 (Alaska 2012) (citing *State, Dep’t of Commerce & Econ. Dev., Div. of Ins. v. Schnell*, 8 P.3d 351, 358-59 (Alaska 2000)).

³⁶¹ *Keener v. State*, 889 P.2d 1063, 1067 (Alaska 1995) (emphasis in original).

³⁶² *Id.*

³⁶³ Compare Plaintiffs’ Complaint to Quiet Title, *supra* note 24 (filed May 16, 2012), with Defendant’s Answer and Counterclaims, *supra* note 25 (filed July 11, 2012).

³⁶⁴ *Keener*, 889 P.2d at 1067.

³⁶⁵ See *Price I*, 75 P.3d, at 1055-56.

and convincing evidence that the R.S. 2477 right-of-way had been accepted prior to November 25, 1958.³⁶⁶

38. Defendant relies heavily on Mr. Sassara's testimony to assert that Homestead Road was built prior to November 25, 1958. However, the Court does not find by clear and convincing evidence that Mr. Sassara constructed Homestead Road before this date for four reasons.

39. First, aerial photos of Plaintiffs' property from 1958 do not show the existence of Homestead Road.³⁶⁷

40. Second, Mr. Sassara's family members did not file homestead applications in the area until November of 1958.³⁶⁸ The Court finds it implausible that Mr. Sassara would spend an entire summer constructing a road prior to his family members having filed homestead applications.

41. Third, the timing of other homestead applications along Homestead Road support a later construction date. Mr. Sassara testified that other homesteaders followed "in the exhaust fumes [of his D8] CAT."³⁶⁹ No homestead applications (except for Mr. Sassara's family members and Mr. Cowart) were filed in 1958.³⁷⁰ In contrast, there are a number of applications throughout 1959 and 1960, with the earliest being filed closer to Burma Road on May 25, 1959.³⁷¹ If homesteaders were following in Mr. Sassara's "exhaust fumes," it is more likely that they were doing so after 1958.

42. Finally, Mr. Sassara's "recollection" that he "probably" constructed Homestead Road in 1958 is not so reliable as to outweigh other evidence to the

³⁶⁶ *Id.* at 1056; *see Hamerly*, 359 P.3d at 125 ("When a citizen has made a valid entry under the homestead laws, the portion covered by the entry is then segregated from the public domain."); Exhibit 2286.

³⁶⁷ *See supra* Findings of Fact, ¶ 110.

³⁶⁸ Exhibit 2058.

³⁶⁹ *See supra* Findings of Fact, Part III: Homestead Road, Section A.

³⁷⁰ Exhibit 2058.

³⁷¹ *Id.*

contrary. Mr. Sassara testified over fifty years after he constructed Homestead Road, and he never testified that he definitely constructed the road in 1958.³⁷²

IV. The Court Finds by Clear and Convincing Evidence That There Is a Twenty-Foot Prescriptive Easement Along Homestead Road as it Crosses Plaintiffs' Property

A. The Law of Prescriptive Easements

43. Public prescriptive easements "require[] the same elements as a private prescriptive easement, except that a public prescriptive easement requires qualifying use by the public . . . [rather than] qualifying use only by [a] private party."³⁷³ Public prescriptive easements must show (1) continuous and uninterrupted use by the public for ten years; (2) hostility, where the public acts as if permission from the owner is not required; and (3) that the use was notorious such that it was reasonably visible to the owner.³⁷⁴ Unlike claims for adverse possession, use of the property need not be exclusive.³⁷⁵

44. Although continuous and uninterrupted use is a requirement for prescriptive easements, "[w]hat might be considered sporadic use in another context would be consistent or constant use in Alaska."³⁷⁶ Public continuous and uninterrupted use "require[s] only that the land be used . . . as an average owner of similar property would use it."³⁷⁷

45. The ten-year requirement usually begins tolling after the owner of the property "physically block[s] access to the easement."³⁷⁸ A prescriptive easement "should be measured back ten years from the first attempt to block its use."³⁷⁹

³⁷² See *supra* Findings of Fact, Part III: Homestead Road, Section A.

³⁷³ *Price v. Eastham*, 254 P.3d 1121, 1125 (Alaska 2011) (*Price III*) (citing *Interior Trails Pres. Coal.*, 115 P.3d at 529).

³⁷⁴ *Interior Trails Pres. Coal.*, 115 P.3d at 530; see also *Price III*, 254 P.3d at 1125-26 & n.20.

³⁷⁵ *Interior Trails Pres. Coal.*, 115 P.3d at 529 (citations omitted).

³⁷⁶ *Shultz*, 10 F.3d at 655.

³⁷⁷ *Nome 2000 v. Fagerstrom*, 799 P.2d 304, 309 (Alaska 1990) (citing *Alaska Nat'l Bank v. Linck*, 559 P.2d 1049, 1052 (Alaska 1977)).

³⁷⁸ *McDonald v. Harris*, 978 P.2d 81, 83 (Alaska 1999) (citing *Swift v. Kniffen*, 706 P.2d 296, 303 (Alaska 1985)).

³⁷⁹ *Price v. Eastham*, 128 P.3d 725, 729 (Alaska 2006) (*Price II*).

Because Ms. Dickson physically blocked Homestead Road on August 2, 2008, the Court “first examine[s] the uses of the easement” prior to August 2, 1998.³⁸⁰

46. Although the scope of an easement may change over time, such changes are generally disfavored and ordinarily can only expand as “is reasonably necessary.”³⁸¹ “[A] determination of an easement’s scope should focus on ‘what a landowner . . . should reasonably have expected to lose by failing to interrupt the adverse use before the prescriptive period had run.’”³⁸²

47. “Hostility is . . . determined by application of an objective test which simply asks whether the possessor acted toward the land as if he owned it, without the permission of one with legal authority to give possession.”³⁸³ Although use is ordinarily presumed to be permissive, “this presumption does not arise if a roadway was not established by the owner of the servient estate for its own use but was for many years the only means of passage to the dominant estate.”³⁸⁴ Furthermore, acquiescence is treated as hostility.³⁸⁵

48. The reasonable visibility of the hostile use—i.e., whether the use is notorious—is determined by an objective test.³⁸⁶ “[A]ctual notice is not required; the true owner is charged with knowing what a reasonably diligent owner would have known.”³⁸⁷ “[V]isible evidence of the claimant’s possession, such that the reasonably diligent owner ‘could see that a hostile flag was being flown over his property,’ is sufficient.”³⁸⁸

³⁸⁰ See *id.*

³⁸¹ See *id.*; see also *Price III*, 254 P.3d at 1126 (citing *Price I*, 75 P.3d at 1058).

³⁸² *Price III*, 254 P.3d at 1126 (citations omitted).

³⁸³ *Nome 2000*, 799 P.2d at 310 (emphasis omitted) (internal quotation marks omitted) (citing *Hubbard v. Curtiss*, 684 P.2d 842, 848 (Alaska 1984)).

³⁸⁴ *McDonald*, 978 P.2d at 85 (internal quotation marks omitted) (citing *McGill v. Wahl*, 839 P.2d 393, 397-98 (Alaska 1992)).

³⁸⁵ *Tenala, Ltd. v. Fowler*, 921 P.2d 1114, 1120 (Alaska 1996) (citing *Swift*, 706 P.2d at 304) (“[I]f the true owners merely acquiesce, and do not intend to permit a use, the claimant’s use is adverse and hostile.”).

³⁸⁶ *Weidner v. State, Dep’t of Transp. & Pub. Facilities*, 860 P.2d 1205, 1209 (Alaska 1993) (citing *Nome 2000*, 799 P.2d at 309 n.7).

³⁸⁷ *Id.* (quoting *Nome 2000*, 799 P.2d at 309 n.7).

³⁸⁸ *Nome 2000*, 799 P.2d at 309 (citing *Shilts v. Young*, 567 P.2d 769, 776 (Alaska 1977)).

49. The scope of prescriptive easements are determined based on “specific factual findings.”³⁸⁹ The scope of an easement can be limited by season, width, and precise uses.³⁹⁰ As an easement’s use evolves, the scope can be widened if a Court “make[s] specific findings as to the reasonableness and necessity of increasing the width of the easement.”³⁹¹

B. A Twenty-Foot Public Prescriptive Easement Exists Along Homestead Road as it Crosses Plaintiffs’ Property

i. Public Prescriptive Easement

50. The Court finds by clear and convincing evidence that a public prescriptive easement in the location of Homestead Road crosses Plaintiffs’ property.

51. First, the Court finds by clear and convincing evidence that there has been continuous and uninterrupted use by the public for the required ten-year period. There is an overwhelming amount of evidence of the public using Homestead Road.³⁹² Ever since the road was constructed by Mr. Sassara, homesteaders and other users have taken highway vehicles and other off-road vehicles along Homestead Road. Since at least 1984, over one hundred sled dog races have been run across Homestead Road. A host of other uses for the property have been documented, including skiing, snowmachining, hiking, biking, walking, and hunters using the road for access. All of this is consistent with how “an average owner of similar property would use it.”³⁹³

52. Second, the Court also finds by clear and convincing evidence that the public’s use of Homestead Road was hostile. The Court finds that the presumption of hostility applies to the circumstances of this case because Mr. Sassara constructed Homestead Road without asking for permission.³⁹⁴ Even if no

³⁸⁹ *Price II*, 128 P.3d at 732.

³⁹⁰ *Price I*, 75 P.3d at 1059.

³⁹¹ *Price III*, 254 P.3d at 1130-31.

³⁹² See *supra* Findings of Fact, Part III: Homestead Road, Sections A-D.

³⁹³ *Shultz*, 10 F.3d at 655.

³⁹⁴ *McDonald*, 978 P.2d at 85 (citing *McGill*, 839 P.2d at 397-98).

presumption of hostility applied, the public's use of Homestead Road was hostile. Plaintiffs and their parents have exhibited a long-standing hostility to any and all trespassers across their property.³⁹⁵

53. Third, the Court finds by clear and convincing evidence that the public's use of Homestead Road was of a nature reasonably visible to the owner. Any reasonable landowner, even for a relatively remote piece of property, would have objectively been able to notice a nine-foot road that has been visible from the air since at least 1960. Furthermore, the public's use of Homestead Road is consistent with what a reasonably diligent landowner should have known. Homesteaders consistently used Homestead Road in the summer to access their homesteads, mushers used Homestead Road as a race route for numerous races during the winter, and a plethora of other users have flown a "hostile flag" for decades across Plaintiffs' property.³⁹⁶

ii. Scope of the Easement: Width

54. The Court finds by clear and convincing evidence that a twenty-foot wide public prescriptive easement exists in the location of Homestead Road as it crosses Plaintiffs' property. In addition to LiDAR imagery indicating that in some places the existing easement could already be twenty-feet wide,³⁹⁷ the Court finds that it is both reasonable and necessary to expand the scope of the original nine-foot wide easement in the interest of public safety.³⁹⁸ Given the frequency of use by many different users on the trail, including highway vehicles, dog sled teams, snow machines, bicycles, and skiers, a nine-foot wide road is insufficient to allow two-way traffic to pass each other safely.

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³⁹⁵ See *supra* Findings of Fact, ¶ 129.

³⁹⁶ *Nome 2000*, 799 P.2d at 309 (citing *Shilts*, 567 P.2d at 776); see *supra* Findings of Fact, Part III: Homestead Road, Sections A-D.

³⁹⁷ See Log Notes, *supra* note 83, at 8 (testimony of "Rocky" Beard-Weber).

³⁹⁸ *Price III*, 254 P.3d at 1130-31.

iii. Scope of the Easement: Uses

55. The Court further limits the scope of the twenty-foot wide easement in the location of Homestead Road across Plaintiffs' property by both season and precise users.

56. Some uses of Homestead Road can exist without restriction to seasons. Although Homestead Road was originally intended as a summer road for highway vehicles, it is reasonable to expect highway vehicles to continue to use Homestead Road throughout the year. The same is true for dog mushers, who have been using Homestead Road since at least 1984 for hundreds of races and training purposes year round. Walkers, hikers, bikers, and off-road vehicles may also use Homestead Road without seasonal restriction. Other users, such as snow machiners and skiers, may only use Homestead Road during the winter. Hunters may use Homestead Road for access during hunting season.³⁹⁹

57. The Court also finds that the public prescriptive easement along Homestead Road can be used for recreational activities, provided the use has a more minimal impact than the use outlined above.⁴⁰⁰ The Court notes that this is not just a recreational trail; highway vehicles have used Homestead Road for decades. Expanding the use to allow for other low-impact recreational uses is reasonable.⁴⁰¹

C. The Court Does Not Find the Doctrines of Estoppel or Laches Apply to Homestead Road as it Crosses Plaintiffs' Property

i. The Court Does Not Apply Equitable Estoppel

58. The Court finds that Plaintiffs have failed to prove that the State asserted a position against the existence of a public prescriptive easement in the location of Homestead Road across Plaintiffs' property by clear and convincing evidence. DNR's 2008 memorandum had a limited purpose of determining whether

³⁹⁹ See *supra* Findings of Fact, Part III: Homestead Road, Sections A-D.

⁴⁰⁰ See *supra* Conclusions of Law, ¶ 56.

⁴⁰¹ See *Price II*, 128 P.3d at 729; see also *Price III*, 254 P.3d at 1126 (citing *Price I*, 75 P.3d at 1058).

Homestead Road was either the "Iditarod National Historic Trail" or the "historic Iditarod Trail."⁴⁰² The Court does not find by clear and convincing evidence that this poorly-written memorandum asserted a position by the State that relinquished all possible easements to Homestead Road.

ii. The Court Does Not Apply Laches

59. For the same reasons the Court found that the doctrine of laches did not apply to the R.S. 2477 across Plaintiffs' property, the Court finds that the doctrine of laches does not apply to Homestead Road.⁴⁰³

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⁴⁰² Exhibit 1008, at 1.

⁴⁰³ See *supra* Conclusions of Law, ¶¶ 34-35.

CONCLUSION


The Court finds by clear and convincing evidence that a 100-foot wide R.S. 2477 right-of-way exists across Plaintiffs' property in the location of what is known as the "historic Iditarod Trail." Because this trail is an R.S. 2477, the Court does not reach the question of whether a public prescriptive easement exists across Plaintiffs' property in that location.

The Court does not find by clear and convincing evidence that Homestead Road is an R.S. 2477 right-of-way as it crosses Plaintiffs' property. However, the Court does find by clear and convincing evidence that a twenty-foot wide public prescriptive easement exists across Plaintiffs' property in the location of Homestead Road. This prescriptive easement is twenty-feet wide because it is reasonable and necessary for the easement to be large enough to allow for two-way traffic to safely use the road. The public prescriptive easement in the location of Homestead Road as it crosses Plaintiffs' property is restricted to highway vehicles, dog mushers, skiers, snowmachiners, hunters, hikers, bikers, off-road vehicles, and other low-impact recreational uses as outlined above.

Defendant is the prevailing party and is entitled to attorney's fees upon supplying an affidavit on reasonable costs.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 14th day of June 2016.


CATHERINE M. EASTER
Superior Court Judge

I certify that on 6/14/16
a copy of the above was mailed to:
Zeman/Need
Secretary/Deputy Clerk Sullivan
Brooking

ANCSA Regulation Changes 2011 to present

Effective 11/5/2011

- **3 AAC 08.360 (Investigations)** was added to address the procedure to be followed when a person submits a request for an investigation to the Division and when the Division conducts an investigation of a possible violation of 3 AAC 08.305 – 3 AAC 08.365.

Effective 1/4/2013

- **3 AAC 08.307 (Filing of proxy solicitation materials)** was added to allow filers the flexibility of electronic or hard-copy filing of documents that must be filed with the Division. Previously, only hard-copy filings were accepted.
- **3 AAC 08.312 (Use of electronic forums and filing requirements)** was added to allow ANCSA corporations or shareholders to post on “electronic forums” to facilitate communication among shareholders and between shareholders and the corporations related to proxy solicitations. The provision outlines the responsibilities of those who post on an electronic forum.
- **3 AAC 08.365** added a definition for “electronic forum.”

Effective 11/3/13

- **3 AAC 08.315 (False or misleading statements)** was amended to remove listed examples of what may be considered “misleading.” The change reflects more accurately that whether or not proxy material content is misleading depends on the individual facts and circumstances of each case.
- **3 AAC 08.365 (Definitions)** was amended the definition of “annual report” to match the requirement in federal law requiring regional and village corporations to provide an annual audited financial statement to their shareholders.

Proposed but not adopted – 2013

- **3 AAC 08.345 and 3 AAC 08.355 (Board and non-board solicitations)** were proposed to be amended to clarify what disclosures must be made by candidates and what disclosures must be made by the corporation rather than distinguishing between “board” and “non-board” solicitations. The content of the disclosures was not proposed to be changed. After the public commenting period, the Division decided not to adopt these changes.

Effective 3/20/16

- **3 AAC 08.345(Board solicitations)** amended to update and clarify required candidate disclosures in board proxies, including disclosing all positions previously held with the corporation, the number of all board meetings attended regardless of the overall percentage, and increasing the length of time from 5 to 10 years that the occurrence of certain events material to a candidate’s suitability must be disclosed, including pending criminal proceedings. This section was also amended to update and clarify what a corporation must disclose in a proxy statement, including the name of directors who have

ANCSA Regulation Changes 2011 to present

opposed an action in writing that is to be submitted to a shareholder vote and a description of the nominating procedures for candidates.

- **3 AAC 08.355 (Non-board solicitations)** amended to update and clarify required candidate disclosures in independent proxies to mirror the proposed changes for board candidate disclosures in board proxies.
- **3 AAC 08.360 (Investigations)** amended to specify that the Division shall provide the alleged violator and may provide the corporation written notification when it opens an investigation.
- **3 AAC 08.365 (Definitions)** added or amended several definitions including: “affiliate,” “control,” and “subsidiary” as defined by the AK Corporations Code; “minor offense” as defined by minor offense procedure rule; “residence” as defined for purposes of voting by statute.
- **3 AAC 08.920 (Filing Fees)** adds an annual \$250 filing fee and an additional fee on a sliding scale from \$250-\$25,000 for corporations required to file with the Division.

Alaska Administrative Code
Title 3, Chapter 8, Article 3
Alaska Native Claims Act Corporations: Solicitation of Proxies
As of March 20, 2016

3 AAC 08.305. Application of 3 AAC 08.305 - 3 AAC 08.365

3 AAC 08.305 - 3 AAC 08.365 apply only to corporations organized under AS 10.06 and 43 U.S.C. 1601 - 1629h (Alaska Native Claims Settlement Act) and subject to the requirements of AS 45.55.139.

History: Eff. 1/4/81, Register 77; am 3/20/2016, Register 217

Authority: AS 45.55.138 AS 45.55.139 AS 45.55.240 AS 45.55.950

3 AAC 08.307. Filing of proxy solicitation materials

(a) An annual report, proxy, consent or authorization, proxy statement, or other material relating to proxy solicitation required to be filed with the administrator under AS 45.55.139 shall be filed electronically, in digital media format, or in paper format. The filing must be similar in appearance to the material that is distributed to shareholders.

(b) A document filed electronically must be in searchable, portable document format (pdf) or another format pre-approved in writing by the administrator.

(c) A filing in digital media format, including an audio, video, or digital recording, must be in a compact disc (CD) or digital versatile disc (DVD) medium or another format pre-approved in writing by the administrator. Two copies shall be filed with the administrator.

(d) If a filing is submitted in paper format, two legible, printed copies shall be filed with the administrator.

(e) An annual report, proxy, consent or authorization, proxy statement, or other material relating to proxy solicitation is filed under AS 45.55.139 when the administrator receives it, unless the administrator rejects it under (f) of this section.

(f) The administrator may reject a filing if it is not required to be filed under AS 45.55.139, contains personal information, or is illegible or corrupt. If a filing is rejected, it may be corrected and resubmitted to the administrator. In this subsection, "personal information" has the meaning given in AS 45.48.090.

(g) Material filed and accepted under AS 45.55.139 becomes a part of the records of the administrator and, unless the administrator designates it confidential, is available for public inspection.

History: Eff. 1/4/2013, Register 205

Authority: AS 45.55.139 AS 45.55.160 AS 45.55.950

3 AAC 08.312. Use of electronic forums and filing requirements

(a) A person who posts an annual report, proxy, consent or authorization, proxy statement, or other material relating to proxy solicitation on the Internet, including on an electronic forum, is responsible for filing it with the administrator as required by AS 45.55.139 and for ensuring it complies with 3 AAC 08.300 - 3 AAC 08.365.

(b) A posting on an electronic forum is presumed to be distributed, published, or made available to at least 30 Alaska resident shareholders under AS 45.55.139.

History: Eff. 1/4/2013, Register 205

Authority: AS 45.55.139 AS 45.55.160 AS 45.55.950

3 AAC 08.315. False or misleading statements

(a) A solicitation may not be made by means of a proxy statement, proxy, notice of meeting, or other communication that contains a material misrepresentation. A misrepresentation is a statement that, at the time and under the circumstances in which it is made (1) is false or misleading with respect to a material fact; (2) omits a material fact necessary in order to make a statement made in the solicitation not false or misleading; or (3) omits a material fact necessary to correct a statement, in an earlier communication regarding the solicitation of a proxy for the same meeting or subject matter, which has become false or misleading. A misrepresentation is material if there is substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. A series of statements or omissions that are objectively false or misleading, but which might not be material misrepresentations if considered separately, might be material misrepresentations if there is a substantial likelihood that a reasonable shareholder would consider the series important in deciding how to vote. Subjective proof that one or more shareholders actually granted a proxy because of a misrepresentation is not required.

(b) The fact that a proxy statement, proxy, or other soliciting material has been filed with or examined by the administrator under AS 45.55.139 is not a finding by the administrator that the material is accurate or complete or not false or misleading, or that the administrator has passed upon the merits of or approved any statement contained in the solicitation or any matter to be acted upon by shareholders. No representation to the contrary may be made.

(c) The administrator may require a person who has brought to the administrator's attention a solicitation which the person believes contains materially false or misleading statements to explain the reasons for the person's view in writing.

History: Eff. 1/4/81, Register 77; am 11/27/88, Register 108; am 11/3/2013, Register 208

Authority: AS 45.55.138 AS 45.55.139 AS 45.55.160 AS 45.55.950

3 AAC 08.325. Prohibition of certain solicitations

A person may not solicit

- (1) an undated or postdated proxy;
- (2) a proxy which provides that it is dated after the date on which it is signed by the shareholder;
- (3) a proxy which fails to disclose the shareholders' meeting, or any adjournment of that shareholders' meeting, for which it is solicited;
- (4) a proxy which confers authority to vote at more than one shareholders' meeting or any adjournment of that shareholders' meeting; or
- (5) a proxy which authorizes a vote at any shareholders' meeting other than the one disclosed.

History: Eff. 1/4/81, Register 77

Authority: AS 45.55.138 AS 45.55.139 AS 45.55.160 AS 45.55.240

3 AAC 08.335. Requirements as to proxy

- (a) A proxyholder shall either attend the shareholders' meeting in person or execute a power of substitution so that the shares for which the proxyholder has proxies are represented at the meeting.
- (b) A proxyholder shall vote in accordance with any choices made by the shareholder or in the manner provided by the proxy when the shareholder has not specified a choice.
- (c) The proxy must
 - (1) indicate that the proxy is solicited on behalf of the board or, if solicited other than by the board, indicate the identity of the persons on whose behalf the solicitation is made;
 - (2) provide a specifically designated blank space for dating the proxy; and
 - (3) provide a means for the shareholder to specify by boxes a choice between approval or disapproval of each matter or group of related matters identified in the proxy as intended to be acted upon, other than the election of directors.
- (d) A proxy may confer authority for matters on which a choice is not made by the shareholder if the proxy discloses how the shares represented by the proxy will be voted in each case.
- (e) A proxy that provides for the election of directors must
 - (1) set out the names of the nominees for whom the proxy is solicited; and

(2) clearly provide one of the following:

(A) a box opposite the name of each nominee which may be marked to indicate that authority to vote for that nominee is withheld;

(B) an instruction that the shareholder may withhold authority to vote for a nominee by lining through or otherwise striking out the name of that nominee;

(C) a "ballot" type of selection in which the shareholder is permitted to award votes to selected nominees of the shareholder's choosing.

(f) A proxy may confer discretionary authority to vote only with respect to the following:

(1) matters which the persons making the solicitation do not know, a reasonable time before the solicitation, are to be presented at the meeting;

(2) approval of the minutes of the prior meeting if the approval does not amount to ratification of the action taken at that meeting;

(3) the election of a person to an office for which a bona fide nominee is named in the proxy statement and the nominee is unable to serve or for good cause will not serve;

(4) a proposal omitted from the proxy statement and proxy, if solicited for an annual meeting by participants other than the board; or

(5) matters incident to the conduct of the meeting.

(g) If action is to be taken on the election of directors and if the shareholders have cumulative voting rights, a proxy may confer discretionary authority to cumulate votes.

History: Eff. 1/4/81, Register 77; am 11/27/88, Register 108; am 11/3/2013, Register 208

Authority: AS 45.55.138 AS 45.55.139 AS 45.55.160 AS 45.55.950

3 AAC 08.345. Board solicitations

(a) The solicitation of proxies on behalf of the board for an annual meeting must be preceded or accompanied by the annual report for the corporation's last fiscal year, unless

(1) the solicitation is made on behalf of the board before the annual report is available;

(2) solicitation is being made at the time in opposition to the board; and

(3) the board's proxy statement includes an undertaking to furnish the annual report to all shareholders being solicited at least 50 days before the date of the annual meeting.

(b) The solicitation of proxies on behalf of the board must be preceded or accompanied by a dated, written proxy statement including the following:

(1) if action is to be taken on the election of directors, a description of each nominee of the board who has consented to act if elected and of each director whose term of office will continue after the shareholders' meeting; each description must include

(A) name, age, and state and city of residence;

(B) all positions and offices presently and previously held with the corporation and its subsidiaries;

(C) the remaining term in office as director and all other periods of service as a director for the corporation and its subsidiaries;

(D) the total number of board meetings, including regularly scheduled and special meetings, and the number of meetings of committees on which the nominee or director served, and the percentage attendance during the last fiscal year at meetings of the board, including regularly scheduled and special meetings, and meetings of committees on which the nominee or director served, including those meetings for which the absence was excused;

(E) the nature of any family relationship with any director, nominee, or executive officer of the corporation and its subsidiaries;

(F) business experience during the past five years, including

(i) principal employment or occupation;

(ii) the nominee's or director's employer; and

(iii) other directorships held for other entities;

(G) any of the following events that occurred during the past 10 years: voluntary or involuntary petition under any bankruptcy or insolvency laws, appointment of a receiver, pending criminal proceedings, except traffic violations or other minor offenses, conviction or plea of nolo contendere in a criminal proceeding, except traffic violations or other minor offenses, and the entry of any final judgment, order, or decree, not subsequently reversed or vacated, that the nominee or director engaged in unethical or illegal business practices, violated fiduciary duties, or violated securities laws; and

(H) financial transactions by the corporation since the beginning of the corporation's last fiscal year and presently proposed financial transactions by the corporation or its subsidiaries if

(i) the transactions in the aggregate exceed \$20,000; and

(ii) the transaction is with the nominee, director, a member of the nominee's or director's family, or an entity, other than an affiliate of the corporation, where a nominee, director, or a member of the nominee's or director's family is employed by, is an officer or director of, or owns, directly or indirectly, an interest in the entity;

(2) a statement of all current compensation or other remuneration distributed or accrued and of all future compensation or other remuneration contributed during the corporation's last fiscal year on behalf of

(A) each of the five most highly compensated persons of the corporation, whether directors or officers for the director's or officer's services in all capacities to the corporation and its subsidiaries, naming each such person; and

(B) all officers and directors as a group, stating the number of persons in the group without naming them; future remuneration contributed includes amounts that were reported in the corporation's annual report for the last fiscal year for annuity, pension, or retirement plans and for deferred compensation or profit sharing plans; information need not be furnished regarding costs for ordinary and necessary business expenses or for personal benefits, group life, health, hospitalization, or medical reimbursement plans that do not discriminate in favor of officers or directors of the corporation and that are available generally to all salaried employees;

(3) a brief description, including the purpose and amount, of financial transactions by the corporation or its subsidiaries since the beginning of the corporation's last fiscal year and any presently proposed financial transactions by the corporation or a subsidiary if

(A) the transactions in the aggregate exceed \$20,000; and

(B) the transaction is with a director, nominee, executive officer, or family member of a director, nominee, or executive officer, or is with an entity, other than an affiliate of the corporation, where the director, nominee, or executive officer or a family member is employed by, is an officer or director of, or owns, directly or indirectly, an interest in the entity;

(4) a brief description of all legal proceedings to which any director, nominee, or executive officer has been a party with interests adverse to the corporation or its subsidiaries during the last 10 years;

(5) if action is to be taken on the election of directors or other matters for which the financial statements are material to the exercise of prudent judgment, a description of the corporation's relationship with its independent public accountants; this description must include

(A) the name of the principal accountant for the last fiscal year;

(B) a statement indicating whether representatives of the principal accountant are expected to be present at the meeting with the opportunity of making a statement, if they desire, and with the responsibility of responding to appropriate questions;

(C) each professional service provided by the principal accountant and paid for by the corporation during the last fiscal year, such as preparation of corporate tax returns, preparation of personal tax returns, review of proposed corporate acquisitions, review of personal investments, or development of corporate data processing systems;

(D) the percentage relationship which the aggregate of the fees for all nonaudit services bears to the aggregate of fees for both audit and nonaudit services performed by the principal accountant and paid for by the corporation;

(E) each disagreement with the principal accountant in connection with audits of the last two fiscal years and any subsequent interim period if (i) the principal accountant has been changed since the date of publication or distribution of the proxy statement for the last annual meeting; and (ii) there have been disagreements on matters of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former principal accountant, would have caused the former principal accountant to make references to the disagreements in the audit report; the corporation must, at least 20 days before the date of publication or distribution of the proxy statement, furnish by certified mail its description of any disagreements to the former principal accountant; if the former principal accountant believes the description to be incorrect or incomplete, and if the former principal accountant forwards to the corporation, not later than 10 days of the date of the former principal accountant's receipt of the corporation's description, a brief written statement of the former principal accountant's view, the statement must be included in the corporation's proxy statement;

(6) a brief description of any arrangement, stating amounts, by which a director is compensated for all services as a director of the corporation and its subsidiaries, including any additional amounts payable for committee participation or special assignments; information need not be furnished regarding costs for ordinary and necessary business expenses or for personal benefits, group life, health, hospitalization, or medical reimbursement plans that do not discriminate in favor of officers or directors of the corporation and that are available generally to all salaried employees;

(7) a brief description of the board's leadership structure, including whether the same person serves as president and board chair, or as president and chief executive officer, the attendance policy for meetings, and a list of the board's committees, if any, performing audit, nominating, and compensation functions, the membership of each committee, the number of meetings held by each committee during the last fiscal year, and a brief description of the functions actually performed by each committee;

(8) a brief description of the methods to be employed to solicit proxies, if other than by use of the mail, and a statement that solicitation is made on behalf of the board;

(9) a statement of the total amount estimated to be spent and the total already expended on the solicitation of proxies; expenditures include fees for attorneys, accountants, solicitors, and public relations or financial advisers and expenses for advertising, printing, transportation, litigation, or other expenses incidental to the solicitation; however, the following expenses may be excluded:

(A) the amounts which the corporation would normally spend on a solicitation for an election of directors in the absence of a contest; and

(B) the salaries and wages of regular employees and officers, if a statement to that effect is included in the proxy statement;

(10) a statement indicating who will bear the cost of solicitation and the total amount any participant, other than the board and the corporation, has contributed or has agreed to contribute, unless the participant is a contributor of less than \$500 in the aggregate;

(11) a statement describing any formal procedure or deadline limiting the shareholder's rights to revoke a proxy before its exercise;

(12) a statement of the number of shares outstanding and entitled to be voted at the meeting;

(13) a statement of the date on which the record of shareholders entitled to vote at the meeting will be determined; if the right to vote is not limited to shareholders of record on that date, the solicitation must indicate the conditions under which other shareholders may be entitled to vote;

(14) if action is to be taken on the election of directors and if the shareholders have cumulative voting rights

(A) a statement that they have the rights; and

(B) a brief description of those rights;

(15) for each matter that is to be submitted to a vote of the shareholders, other than the election of directors, a description of the proposal, a statement of the vote required for its approval, and the name of any director who has notified the corporation in writing that the director intends to oppose the proposed action; for example, if action is to be taken on

(A) a proposed amendment to the articles of incorporation or bylaws, the description must include the reasons for and against the proposed amendment, the general effect of the amendment, and the names of any directors who oppose the amendment; or

(B) a proposed property transaction, in addition to identifying any directors who oppose the transaction, the description must

(i) outline the material features of the proposed transaction;

(ii) state the nature and amount of consideration and, to the extent practicable, outline the facts that bear on the question of the fairness of consideration; and

(iii) state the name and address of the other party or parties to the proposed transaction and the nature of any material relationship of the party or parties to the corporation, its subsidiaries, officers, or directors;

(16) a brief description of any substantial interest, direct or indirect, by shareholdings or otherwise, of each participant or executive officer in any matter to be acted upon at the meeting, unless the participant or executive officer owns shares in the corporation and would receive no extra or special benefit not shared on a pro rata basis by all other shareholders of the same class; and

(17) a brief description of the nominating procedures for board candidates.

(c) If a candidate included in a board solicitation or a candidate soliciting write-in votes does not engage in any additional proxy solicitations, the candidate may rely on inclusion in the board's proxy statement, but the candidate remains responsible for the accuracy and completeness of the information the candidate provided to the board. If, however, the candidate, whether recommended by the board or a candidate included on an open proxy, elects to engage in any additional solicitation, the candidate must comply with 3 AAC 08.355.

History: Eff. 1/4/81, Register 77; am 11/27/88, Register 108; am 11/3/2013, Register 208; am 3/20/2016, Register 217

Authority: AS 45.55.138 AS 45.55.139 AS 45.55.160 AS 45.55.950

3 AAC 08.355. Non-board solicitations

The solicitation of proxies on behalf of a participant, other than solicitations under 3 AAC 08.345, must be preceded or accompanied by a dated, written proxy statement including the following:

- (1) the name of the corporation in respect to which proxies are being solicited;
- (2) the name and address of each participant, including each proxyholder, who has joined or proposes to join in the solicitation;
- (3) a statement indicating whether any of the participants in the solicitation has an arrangement or understanding with an entity for future employment by the corporation or future financial transactions to which the corporation will or may become a party, and a description listing the terms of and the parties to each arrangement or understanding;
- (4) if action is to be taken on the election of directors, a description of each nominee of the participant who has consented to act if elected; each description must include, if applicable
 - (A) name, age, and state and city of residence;
 - (B) all positions and offices presently and previously held with the corporation and its subsidiaries;
 - (C) the remaining term in office as director and all other periods of service as a director for the corporation and its subsidiaries;

(D) the total number of board meetings, including regularly scheduled and special meetings, and the number of meetings of committees on which the nominee served, and the percentage attendance during the last fiscal year at meetings of the board, including regularly scheduled and special meetings, and meetings of committees on which the nominee served, including those meetings for which the absence was excused;

(E) the nature of any family relationship with any director, nominee, or executive officer of the corporation and its subsidiaries;

(F) business experience during the past five years, including

(i) principal employment or occupation;

(ii) the nominee's or director's employer; and

(iii) other directorships held for other entities; and

(G) any of the following events that occurred during the past 10 years: voluntary or involuntary petition under any bankruptcy or insolvency laws, appointment of a receiver, pending criminal proceedings except traffic violations or other minor offenses, conviction or plea of nolo contendere in a criminal proceeding, except traffic violations or other minor offenses, and the entry of any final judgment, order, or decree, not subsequently reversed or vacated, that the nominee engaged in unethical or illegal business practices, violated fiduciary duties, or violated securities laws;

(5) a brief description of financial transactions by the corporation, including purpose and amount, with that participant, a member of that participant's family, or any entity since the beginning of the corporation's last fiscal year and presently proposed financial transactions by the corporation with that person or entity if

(A) the transactions in the aggregate exceed \$20,000; and

(B) the participant in the solicitation or a member of the participant's family is a party to the transaction or is employed by, is an officer or director of, or owns, directly or indirectly, an interest in the entity who is a party to the transaction;

(6) a brief description of all legal proceedings to which each participant in the solicitation is a party with interests adverse to the corporation or its subsidiaries during the last 10 years;

(7) a brief description of the methods to be employed to solicit proxies, if other than by the use of the mail;

(8) a statement of the total amount estimated to be spent and the total already expended on the solicitation of proxies;

(9) a statement indicating who will bear the expense of solicitation, and the amount each participant in the solicitation has contributed or has agreed to contribute, unless the participant is a contributor of less than \$500 in the aggregate;

(10) a statement indicating whether reimbursement for solicitation expenses will be sought from the corporation; and

(11) if the proxy statement relates to any matter requiring notice to shareholders by law or to a special shareholders' meeting for which any participant in the solicitation sought shareholder signatures on a document calling for the special meeting

(A) a description of each matter which is to be submitted to a vote of the shareholders and a statement of the vote required for its approval; and

(B) a description of any substantial interest, direct or indirect, by shareholdings or otherwise, of each participant in the solicitation, or family member of that participant, in any matter to be acted upon at the meeting, unless the participant or family member owns shares in the corporation and would receive no extra or special benefit not shared on a pro rata basis by all other shareholders of the same class.

History: Eff. 1/4/81, Register 77; am 11/3/2013, Register 208; am 3/20/2016, Register 217

Authority: AS 45.55.138 AS 45.55.139 AS 45.55.160 AS 45.55.950

3 AAC 08.360. Investigations

(a) A shareholder, director, or officer of a corporation subject to AS 45.55.139, aggrieved by an alleged violation of 3 AAC 08.305 - 3 AAC 08.365 may request that the administrator investigate the alleged violation. An aggrieved person is not required to request that the administrator investigate an alleged violation before seeking other remedies, including court action.

(b) Except as provided in this subsection, a request for investigation must be filed with the administrator not later than 90 days after the date of the shareholder vote for which the proxies in question were solicited. If the administrator finds the requester did not discover and reasonably could not have discovered the alleged violation within the time required by this subsection, the deadline for filing the request for investigation is 90 days after the time the requester discovered or reasonably should have discovered the alleged violation.

(c) A request for investigation must be filed with the administrator on a form provided by the administrator or in a separate writing. A request for investigation that is not filed on a form provided by the administrator must include

(1) the full name, mailing address, telephone number, and electronic mail address, if any, for the requester and, if the requester is not a corporation under 3 AAC 08.305, for both the requester and the corporation;

- (2) the date of the shareholder meeting for which proxies are solicited, if known;
 - (3) the full name, mailing address, telephone number, and electronic mail address, if known, of the alleged violator of 3 AAC 08.305 - 3 AAC 08.365;
 - (4) each regulation allegedly violated;
 - (5) a description of the solicitation involving an alleged violation and a copy of any materials relevant to an alleged violation;
 - (6) the full name, mailing address, telephone number, and electronic mail address, if any, of other persons who may have information regarding the alleged violation;
 - (7) a written summary of any meetings, communications, or other contacts that the requester has had with the alleged violator of 3 AAC 08.305 - 3 AAC 08.365 regarding the alleged violation;
 - (8) a description of any court action related to the alleged violation of 3 AAC 08.305 - 3 AAC 08.365 that has been filed; and
 - (9) the requester's signed acknowledgment that the information provided
 - (A) is true and complete to the best of the requester's knowledge;
 - (B) must be updated immediately by the requester if other information is discovered, a ruling or decision is issued in a court action, or a court action is filed;
 - (C) may be disclosed by the administrator as necessary or appropriate to investigate an allegation, in a public order of the administrator, or at an administrative hearing that could result from an investigation;
 - (D) constitutes a request for an investigation under this section;
 - (E) if the request is filed more than 90 days after the date of the shareholder vote for which the proxies in question were solicited, the reason that the requester did not discover and reasonably could not have discovered the alleged violation within the 90-day period required by (b) of this section.
- (d) The administrator
- (1) shall return an incomplete request for investigation to the person making the request;
 - (2) may consolidate multiple requests for investigation; and
 - (3) may commence an investigation at any time whether or not a request for investigation is filed.

(e) Not later than 10 business days after the administrator's receipt of a complete request for investigation, the administrator shall notify the requester whether the administrator will open or decline to open an investigation. If, within the 10-business-day period specified in this subsection, the administrator is unable to obtain necessary information about the request, the administrator shall notify the requester in writing within the 10-business-day period of the additional time that the administrator needs to decide whether to open or decline to open an investigation. If the administrator opens an investigation, the administrator may limit the scope of the investigation.

(f) If the administrator opens an investigation, the administrator shall provide the alleged violator and may provide the corporation written notice of the investigation. The administrator may disclose information, including the identity of the requester, if necessary or appropriate to investigate an allegation.

(g) After investigation, the administrator shall notify the requester, the corporation, if previously notified under (f) of this section, and the alleged violator in writing of the administrator's decision to take no administrative action or to issue an order under AS 45.55.920.

(h) This section applies to a request for investigation filed with the administrator or an investigation initiated by the administrator on or after November 5, 2011.

History: Eff. 11/5/2011, Register 200; am 3/20/2016, Register 217

Authority: AS 45.55.139 AS 45.55.160 AS 45.55.905 AS 45.55.910 AS 45.55.950

Editor's note: As of Register 202 (July 2012), the regulations attorney made technical revisions under AS 44.62.125 (b)(6), to 3 AAC 08.360(d), (g), and (h).

3 AAC 08.365. Definitions relating to solicitation of proxies

For purposes of 3 AAC 08.305 - 3 AAC 08.365, the following definitions apply:

(1) "annual report" means a summary by the corporation of its business activities, results of operations, and financial condition for the last fiscal year, including consolidated financial statements confirming that the corporation's accounts were audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of the state or the United States as required by 43 U.S.C. 1601 - 1629;

(2) "board" means the board of directors of the issuer of shares for which a proxy is solicited;

(3) "contest" means an issue in which the board expects one or more solicitations to be made which will be subject to 3 AAC 08.355;

(4) "corporation" means the issuer of shares with respect to which a proxy is solicited;

(5) "entity" means an individual, sole proprietorship, partnership, joint venture, trust, association, firm, corporation, or other organization, whether or not operated for profit;

(6) "executive officer" means the president, secretary, treasurer, a vice president in charge of a principal business function, such as sales, administration, or finance, or any other person who performs similar policy-making functions for the corporation;

(7) "family" means an individual's spouse, parents, children, or siblings by blood or adoption;

(8) "financial transaction" means

(A) the buying, selling, or leasing of real or personal property or of an interest in real or personal property, including, but not limited to, an option, right of first refusal, or joint venture interest;

(B) the buying or selling of services;

(C) the loaning or borrowing of money or a preliminary commitment to that transaction; or

(D) any other transaction which is substantially similar in nature to those listed in this paragraph, excluding distributions mandated by 43 U.S.C. § 1606(j), effective December 18, 1971;

(9) "last fiscal year" means the fiscal year of the corporation most recently completed before the date of the meeting for which proxies are to be solicited;

(10) "nominee" means a person who has consented to being named in a proxy statement and who has agreed to serve if elected;

(11) "participant"

(A) means the board and the corporation;

(B) means a nominee for whose election as director proxies are solicited;

(C) means a committee or group which solicits proxies or a member of the committee or group;

(D) means a person who finances, directly or indirectly, the solicitation of proxies, except a person who contributes not more than \$500 and who is not otherwise a participant;

(E) means a person who solicits proxies;

(F) does not include

(i) a person or organization retained or employed by a participant to solicit shareholders whose activities are limited to the performance of the person's duties in the course of employment;

(ii) a person who merely transmits proxy soliciting material or performs other ministerial or clerical duties;

(iii) a person employed by a participant in the capacity of attorney, accountant, or as an advertising, public relations, or financial adviser, whose activities are limited to the performance of the person's duties in the course of employment; or

(iv) a person regularly employed as an officer or employee of a participant who is not otherwise a participant;

(12) "proxy" means a written authorization which may take the form of a consent, revocation of authority, or failure to act or dissent, signed by a shareholder or his attorney-in-fact and giving another person power to vote with respect to the shares of the shareholder;

(13) "proxyholder" means a person to whom a proxy or power of substitution is given;

(14) "proxy statement" means a letter, publication, press release, advertisement, radio/television script or tape, or other communication of any type which is made available to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy;

(15) "shareholder" means one who is the holder of record of a share in the corporation;

(16) "solicitation" means

(A) a request to execute or not to execute, or to revoke a proxy; or

(B) the distributing of a proxy or other communication to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy;

(17) "electronic forum"

(A) means a forum that is created on and accessible by means of the Internet, and that allows communication among users;

(B) includes

(i) blogs or other websites that allow for the posting of reader comments; and

(ii) websites for social networking, websites for microblogging, and other forms of electronic communication through which users create communities on the Internet to share information, ideas, personal messages, videos, and similar content;

(18) "affiliate" has the meaning given in AS 10.06.990;

(19) "control" has the meaning given in AS 10.06.990;

(20) "minor offense" has the meaning given in Rule 2 of the Alaska Rules of Minor Offense Procedure;

(21) "residence" means residence for purpose of voting, as determined under AS 15.05.020;

(22) "subsidiary" has the meaning given in AS 10.06.990.

History: Eff. 1/4/81, Register 77; am 11/27/88, Register 108; am 1/4/2013, Register 205; am 11/3/2013, Register 208; am 3/20/2016, Register 217

Authority: AS 45.55.138 AS 45.55.139 AS 45.55.160 AS 45.55.950

3 AAC 08.920. Filing, fees and forms

* * *

(c) A corporation subject to the requirements of AS 45.55.139 shall pay a filing fee of \$250 plus an additional fee based on the corporation's total assets as reported in its last annual report. The filing fee and additional fee is due concurrently with the filing of the corporation's annual report. The additional fee is computed using the following schedule:

(1) up to \$5,000,000; \$250;

(2) \$5,000,001 or more, but not over \$15,000,000; \$500;

(3) \$15,000,001 or more, but not over \$50,000,000; \$1,250;

(4) \$50,000,001 or more, but not over \$100,000,000; \$2,500;

(5) \$100,000,001 or more, but not over \$250,000,000; \$5,000;

(6) \$250,000,001 or more, but not over \$500,000,000; \$12,500;

(7) \$500,000,001 or more; \$25,000.

History: Eff. 2/20/72, Register 41; am 10/1/99, Register 151; am 4/19/2000, Register 154; am 4/20/2000, Register 154; am 1/4/2013, Register 205; am 3/4/2015, Register 213; am 1/17/2016, Register 217; am 3/20/2016, Register 217

Authority: AS 45.55.110 AS 45.55.139 AS 45.55.950 AS 45.55.980



State of Alaska
Department of Commerce, Community and Economic Development
Division of Banking and Securities
550 West 7th Avenue, Suite 1850
Anchorage, Alaska 99501
(907) 269-8140

INFORMATION FOR SHAREHOLDERS OF ANCSA CORPORATIONS

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Introduction

The State of Alaska Division of Banking and Securities has developed this booklet to provide shareholders of corporations organized pursuant to the Alaska Native Claims Settlement Act (ANCSA) with information to assist them in their roles as owners of their corporations. Particularly, this booklet addresses issues a shareholder might encounter when seeking information about their corporation, or when deciding whether to run as a candidate for the board of directors. Although the Division of Banking and Securities cannot provide legal advice, we strive to make the laws and regulations that pertain to Alaska Native Corporations understandable to all those who wish to participate in their roles as corporate owners.

This booklet provides an overview of the Alaska statutes and regulations that govern ANCSA corporations and shareholders. In addition to these laws and regulations, each individual corporation may have adopted bylaws that further define the rights and requirements of its shareholders. Therefore, each shareholder should review the corporation's bylaws and check with the corporation to see what the bylaws permit, prohibit, or require.

The intent of this document is to be informative, but it is merely an overview of the applicable laws and regulations regarding ANCSA corporations. If you decide to solicit proxies, you will be required to follow all of the laws, regulations, and bylaws that apply to your proxy solicitation.

The Alaska Corporations Code

The Alaska Corporations Code (AS 10.06) addresses a wide range of topics from formation of the corporation through dissolution. The Alaska Corporations Code is administered by the Division of Corporations, Business and Professional Licensing.

Articles of Incorporation and Bylaws

The articles of incorporation set forth the basic terms of a corporation's existence, including the number and classes of shares and the purposes and duration of the corporation. The corporate bylaws are provisions adopted by an organization for its internal governance and its external dealings. For further information, see AS 10.06.205-233.

Some corporations have bylaws related to running for the board of directors and other proxy solicitations. Therefore, before a shareholder begins a proxy solicitation, it is important that the shareholder contacts the corporation to review the bylaws to determine what the bylaws permit, prohibit, and require.

The Alaska Corporations Code also addresses annual meetings (AS 10.06.405), proxies (AS 10.06.418), voting of shares (AS 10.06.420), and many other areas too numerous to mention in this booklet.

AS 10.06.960-961 of the Alaska Corporations Code contains exceptions and provisions that apply only to corporations organized under ANCSA.

If you are interested in learning more about the statutes that govern your corporation, you may view the entire Alaska Corporations Code on the Division of Corporations, Business and Professional Licensing website at <http://commerce.alaska.gov/dnn/cbpl/Home.aspx>.

Books, Records, and Shareholder Mailing Lists

Shareholders have an ownership interest in their corporations and have the right to review and copy the corporate books and records, including shareholder mailing lists upon written request.

Alaska Statute 10.06.430(a) requires corporations to keep correct books and records of account, minutes of proceedings, and a record of its shareholders, containing the names and addresses of all shareholders and the number and class of the shares held by each. AS 10.06.430(b) requires corporations to make these documents reasonably available for inspection and copying by its shareholders, their agents, or attorneys.

A shareholder's request to copy corporate records must be in writing and must state the purpose for the request. A shareholder may not sell the shareholder mailing list or other corporate records. To protect shareholders and their corporations, records may only be inspected or obtained for a proper purpose.

If you have any questions about the Alaska Corporations Code, please contact the Division of Corporations, Business and Professional Licensing at (907) 269-8160.

The Alaska Securities Act and Regulations

The Alaska Securities Act (AS 45.55.139) requires corporations organized under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 *et seq.*, with 500 or more shareholders and over \$1,000,000 in assets to file their annual reports, proxies, consents or authorizations, proxy statements, and other materials relating to proxy solicitations with the Division of Banking and Securities. Shareholders of these ANCSA corporations are required to file proxy materials as well.

The State of Alaska has also adopted detailed regulations regarding proxy solicitations for ANCSA corporations and shareholders. *See* AS 45.55.950 and 3 AAC 08.305 - 3 AAC 08.365.

The Alaska Securities Act and its underlying regulations are administered by the Alaska Division of Banking and Securities (Division).

What is a Proxy?

3 AAC 08.365(12) defines "proxy" as a written authorization which may take the form of a consent, revocation of authority, or failure to act or dissent, signed by a shareholder or his attorney-in-fact and giving another person power to vote with respect to the shares of the shareholder.

What is a Solicitation?

3 AAC 08.365(16) defines “solicitation” as a request to execute or not to execute, or to revoke a proxy. A solicitation is also the distributing of a proxy or other communication to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

What Must be Filed?

In addition to the documents specifically listed in AS 45.55.139, any other materials relating to proxy solicitations which are distributed, published, or made available to at least 30 Alaska resident shareholders must be filed with the Division. Therefore, not only solicitation materials distributed to shareholders through the mail must be filed with the Division, but also solicitation materials distributed via e-mail, on websites (including electronic forums), in ads, as well as materials made available through other means, such as meetings, events and billboards, cell phones, etc. **Under Alaska regulations, materials published on the Internet, including electronic forums such as Facebook, are presumed to be distributed to more than 30 Alaska resident shareholders and must be filed with the Division.**

When Must the Materials be Filed?

Any materials that are required to be filed with the Division must be filed with the Division at the same time they are distributed, published, or made available to at least 30 Alaska resident shareholders.

How Do I File Materials?

3 AAC 08.307 allows materials to be filed in paper format, digital media format (CD or DVD), or electronically (pdf). If materials are filed in paper format or digital media format, **two copies are required**, and may be sent directly to the Division.

Materials filed electronically may be e-mailed to anca@alaska.gov or uploaded to the Alaska ZendTo system at <https://drop.state.ak.us/drop/> For instructions on how to upload materials to the Alaska ZendTo system visit:

https://www.commerce.alaska.gov/web/portals/3/pub/ANCSA_ZendToInstructions.pdf

False or Misleading Statements or Omissions

3 AAC 08.315(a) prohibits misrepresentations in solicitation materials. It states:

A solicitation may not be made by means of a proxy statement, proxy, notice of meeting, or other communication that contains a material misrepresentation. A misrepresentation is a statement that, at the time and under the circumstances in which it is made (1) is false or misleading with respect to a material fact; (2) omits a material fact necessary in order to make a statement made in the solicitation not false or misleading; or (3) omits a material fact necessary to correct a statement, in an earlier communication regarding the solicitation of a

proxy for the same meeting or subject matter, which has become false or misleading. A misrepresentation is material if there is substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. A series of statements or omissions that are objectively false or misleading, but which might not be material misrepresentations if considered separately, might be material misrepresentations if there is a substantial likelihood that a reasonable shareholder would consider the series important in deciding how to vote. Subjective proof that one or more shareholders actually granted a proxy because of a misrepresentation is not required.

Prohibition of Certain Solicitations

3 AAC 08.325 states that a person may not solicit

- an undated or postdated proxy;
- a proxy which provides that it is dated after the date on which it is signed by the shareholder;
- a proxy which fails to disclose the shareholders' meeting, or any adjournment of that shareholders' meeting, for which it is solicited;
- a proxy which confers authority to vote at more than one shareholders' meeting or any adjournment of that shareholders' meeting; or
- a proxy which authorizes a vote at any shareholders' meeting other than the one disclosed.

Proxy Requirements

3 AAC 08.335 requires that a proxyholder shall either attend the shareholders' meeting in person or execute a power of substitution so that the shares for which the proxyholder has proxies are represented at the meeting. This regulation also requires that a proxyholder shall vote in accordance with any choices made by the shareholder or in the manner provided by the proxy when the shareholder has not specified a choice.

3 AAC 08.335(c) states that a proxy must

- indicate that the proxy is solicited on behalf of the board or, if solicited other than by the board, indicate the identity of the persons on whose behalf the solicitation is made;
- provide a specifically designated blank space for dating the proxy; and
- provide a means for the shareholder to specify by boxes a choice between approval or disapproval of each matter or group of related matters identified in the proxy as intended to be acted upon, other than the election of directors.

A proxy may confer authority for matters on which a choice is not made by the shareholder if the proxy discloses how the shares represented by the proxy will be voted in each case.

A proxy that provides for the election of directors must set out the names of the nominees for whom the proxy is solicited; and clearly provide one of the following:

- a box opposite the name of each nominee which may be marked to indicate that authority to vote for that nominee is withheld;
- an instruction that the shareholder may withhold authority to vote for a nominee by lining through or otherwise striking out the name of that nominee;
- a "ballot" type of selection in which the shareholder is permitted to award votes to selected nominees of the shareholder's choosing.

A proxy may confer discretionary authority to vote only with respect to the following:

- matters which the persons making the solicitation do not know, a reasonable time before the solicitation, are to be presented at the meeting;
- approval of the minutes of the prior meeting if the approval does not amount to ratification of the action taken at that meeting;
- the election of a person to an office for which a bona fide nominee is named in the proxy statement and the nominee is unable to serve or for good cause will not serve;
- a proposal omitted from the proxy statement and proxy, if solicited for an annual meeting by participants other than the board; or
- matters incident to the conduct of the meeting.

If action is to be taken on the election of directors and if the shareholders have cumulative voting rights, a proxy may confer discretionary authority to cumulate votes.

Board Solicitations

Under 3 AAC 08.345(a), if a Board solicits proxies for an annual meeting, the solicitation must be preceded or accompanied by the annual report for the corporation's last fiscal year, unless

- the solicitation is made on behalf of the board before the annual report is available;
- solicitation is being made at the time in opposition to the board; and
- the board's proxy statement includes an undertaking to furnish the annual report to all shareholders being solicited at least 50 days before the date of the annual meeting.

Under 3 AAC 08.345(b), if a Board solicits proxies, the solicitation must be preceded or accompanied by a dated, written **proxy statement** including the following:

- if action is to be taken on the election of directors, a description of each nominee of the board who has consented to act if elected and of each director whose term of office will continue after the shareholders' meeting; each description must include
 - name, age, and state and city of residence ;
 - all positions and offices presently and previously held with the corporation and its subsidiaries;
 - the remaining term in office as director and all other periods of service as a director for the corporation and its subsidiaries;
 - the total number of board meetings, including regularly scheduled and special meetings, and the number of meetings of committees on which the nominee or director served, and the percentage attendance during the last fiscal year at meetings of the board, including regularly scheduled and special meetings, and meetings of committees on which the nominee or director served, including those meetings for which the absence was excused;
 - the nature of any family relationship with any director, nominee, or executive officer of the corporation and its subsidiaries;
 - business experience during the past five years, including
 - principal employment or occupation;
 - the nominee's or director's employer; and
 - other directorships held for other entities;
 - any of the following events that occurred during the past 10 years: voluntary or involuntary petition under any bankruptcy or insolvency laws, appointment of a receiver, pending criminal proceedings, except traffic violations or other minor offenses, conviction or plea of nolo contendere in a criminal proceeding, except traffic violations or other minor offenses, and the entry of any final judgment, order or decree, not subsequently reversed or vacated, that the nominee or director engaged in unethical or illegal business practices, violated fiduciary duties, or violated securities laws; and
 - financial transactions by the corporation since the beginning of the corporation's last fiscal year and presently proposed financial transactions by the corporation or its subsidiaries if
 - the transactions in the aggregate exceed \$20,000; and
 - the transaction is with the nominee, director, a member of the nominee's or director's family, or an entity, other than an affiliate of the corporation, where a nominee, director, or a member of the nominee's or director's family is

employed by, is an officer or director of, or owns, directly or indirectly, an interest in the entity;

- a statement of all current compensation or other remuneration distributed or accrued and of all future compensation or other remuneration contributed during the corporation's last fiscal year on behalf of
 - each of the five most highly compensated persons of the corporation, whether directors or officers, for the director's or officer's services in all capacities to the corporation and its subsidiaries, naming each such person; and
 - all officers and directors as a group, stating the number of persons in the group without naming them; future remuneration contributed includes amounts that were reported in the corporation's annual report for the last fiscal year for annuity, pension, or retirement plans and for deferred compensation or profit sharing plans; information need not be furnished regarding costs for ordinary and necessary business expenses or for personal benefits, group life, health, hospitalization, or medical reimbursement plans that do not discriminate in favor of officers or directors of the corporation and that are available generally to all salaried employees;
- a brief description, including the purpose and amount, of financial transactions by the corporation or its subsidiaries since the beginning of the corporation's last fiscal year and any presently proposed financial transactions by the corporation or a subsidiary if
 - the transactions in the aggregate exceed \$20,000; and
 - the transaction is with a director, nominee, executive officer, or family member of a director, nominee, or executive officer, or is with an entity, other than an affiliate of the corporation, where the director, nominee, or executive officer or a family member is employed by, is an officer or director of, or owns, directly or indirectly, an interest in the entity;
- a brief description of all legal proceedings to which any director, nominee, or executive officer has been a party with interests adverse to the corporation or its subsidiaries during the last 10 years;
- if action is to be taken on the election of directors or other matters for which the financial statements are material to the exercise of prudent judgment, a description of the corporation's relationship with its independent public accountants; this description must include
 - the name of the principal accountant for the last fiscal year;
 - a statement indicating whether representatives of the principal accountant are expected to be present at the meeting with the opportunity of making a statement, if they desire, and with the responsibility of responding to appropriate questions;

- each professional service provided by the principal accountant and paid for by the corporation during the last fiscal year, such as preparation of corporate tax returns, preparation of personal tax returns, review of proposed corporate acquisitions, review of personal investments, or development of corporate data processing systems;
- the percentage relationship which the aggregate of the fees for all nonaudit services bears to the aggregate of fees for both audit and nonaudit services performed by the principal accountant and paid for by the corporation;
- each disagreement with the principal accountant in connection with audits of the last two fiscal years and any subsequent interim period if (i) the principal accountant has been changed since the date of publication or distribution of the proxy statement for the last annual meeting; and (ii) there have been disagreements on matters of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former principal accountant, would have caused the former principal accountant to make references to the disagreements in the audit report; the corporation must, at least 20 days before the date of publication or distribution of the proxy statement, furnish by certified mail its description of any disagreements to the former principal accountant; if the former principal accountant believes the description to be incorrect or incomplete, and if the former principal accountant forwards to the corporation, not later than 10 days of the date of the former principal accountant's receipt of the corporation's description, a brief written statement of the former principal accountant's view, the statement must be included in the corporation's proxy statement;
- a brief description of any arrangement, stating amounts, by which a director is compensated for all services as a director of the corporation and its subsidiaries, including any additional amounts payable for committee participation or special assignments; information need not be furnished regarding costs for ordinary and necessary business expenses or for personal benefits, group life, health, hospitalization, or medical reimbursement plans that do not discriminate in favor of officers or directors of the corporation and that are available generally to all salaried employees;
- a brief description of the board's leadership structure, including whether the same person serves as president and board chair, or president and chief executive officer, the attendance policy for meetings, and a list of the board's committees, if any, performing audit, nominating and compensation functions, the membership of each committee, the number of meetings held by each committee during the last fiscal year, and a brief description of the functions actually performed by each committee;
- a brief description of the methods to be employed to solicit proxies, if other than by use of the mail, and a statement that solicitation is made on behalf of the board;
- a statement of the total amount estimated to be spent and the total already expended on the solicitation of proxies; expenditures include fees for attorneys, accountants, solicitors, and public relations or financial advisers and expenses for advertising, printing, transportation, litigation, or other expenses incidental to the solicitation; however, the following expenses may be excluded:

- the amounts which the corporation would normally spend on a solicitation for an election of directors in the absence of a contest; and
- the salaries and wages of regular employees and officers, if a statement to that effect is included in the proxy statement;
- a statement indicating who will bear the cost of solicitation and the total amount any participant, other than the board and the corporation, has contributed or has agreed to contribute, unless the participant is a contributor of less than \$500 in the aggregate;
- a statement describing any formal procedure or deadline limiting the shareholder's rights to revoke a proxy before its exercise;
- a statement of the number of shares outstanding and entitled to be voted at the meeting;
- a statement of the date on which the record of shareholders entitled to vote at the meeting will be determined; if the right to vote is not limited to shareholders of record on that date, the solicitation must indicate the conditions under which other shareholders may be entitled to vote;
- if action is to be taken on the election of directors and if the shareholders have cumulative voting rights
 - a statement that they have the rights; and
 - a brief description of those rights;
- for each matter that is to be submitted to a vote of the shareholders, other than the election of directors, a description of the proposal, a statement of the vote required for its approval, and the name of any director who has notified the corporation in writing that the director intends to oppose the proposed action; for example, if action is to be taken on
 - a proposed amendment to the articles of incorporation or bylaws, the description must include the reasons for and against the proposed amendment, the general effect of the amendment, and the names of any directors who oppose the amendment; or
 - a proposed property transaction, in addition to identifying any directors who oppose the transaction, the description must
 - outline the material features of the proposed transaction;
 - state the nature and amount of consideration and, to the extent practicable, outline the facts that bear on the question of the fairness of consideration; and
 - state the name and address of the other party or parties to the proposed transaction and the nature of any material relationship of the party or parties to the corporation, its subsidiaries, officers, or directors;

- a brief description of any substantial interest, direct or indirect, by shareholdings or otherwise, of each participant or executive officer in any matter to be acted upon at the meeting, unless the participant or executive officer owns shares in the corporation and would receive no extra or special benefit not shared on a pro rata basis by all other shareholders of the same class; and
- a brief description of the nominating procedures for board candidates.

Under 3 AAC 08.345(c), if a candidate included in a board solicitation or a candidate soliciting write-in votes does not engage in any additional proxy solicitations, the candidate may rely on inclusion in the board's proxy statement, but the candidate remains responsible for the accuracy and completeness of the information the candidate provided to the board. If, however, the candidate, whether recommended by the board or a candidate included on an open proxy, elects to engage in any additional solicitation, the candidate must comply with 3 AAC 08.355.

Non-Board Solicitations

Under 3 AAC 08.355, if a board candidate, or an individual on behalf of a board candidate, solicits proxies, the solicitation must be preceded or accompanied by a dated, written **proxy statement** including the following:

- the name of the corporation in respect to which proxies are being solicited;
- the name and address of each participant, including each proxyholder, who has joined or proposes to join in the solicitation;
- a statement indicating whether any of the participants in the solicitation has an arrangement or understanding with an entity for future employment by the corporation or future financial transactions to which the corporation will or may become a party, and a description listing the terms of and the parties to each arrangement or understanding;
- if action is to be taken on the election of directors, a description of each nominee of the participant who has consented to act if elected; each description must include, if applicable
 - name, age, and city of residence ;
 - all positions and offices presently and previously held with the corporation and its subsidiaries;
 - the remaining term in office as director and all other periods of service as a director for the corporation and its subsidiaries;
 - the total number of board meetings, including regularly scheduled and special meetings, and the number of meetings of committees on which the nominee served, and the percentage attendance during the last fiscal year at meetings of the board, including regularly scheduled and special meetings, and meetings of committees on

which the nominee served, including those meetings for which the absence was excused ;

- the nature of any family relationship with any director, nominee, or executive officer of the corporation and its subsidiaries;
- business experience during the past five years, including
 - (i) principal employment or occupation;
 - (ii) the nominee's or director's employer; and
 - (iii) other directorships held for other entities; and
- any of the following events that occurred during the past 10 years :
 - voluntary or involuntary petition under any bankruptcy or insolvency laws, appointment of a receiver,
 - pending criminal proceedings except traffic violations or other minor offenses,
 - conviction or plea of nolo contendere in a criminal proceeding, except traffic violations or other minor offenses,
 - and the entry of any final judgment, order, or decree, not subsequently reversed or vacated, that he engaged in unethical or illegal business practices, violated fiduciary duties, or violated securities laws;
- a brief description of financial transactions by the corporation, including purpose and amount, with that participant, a member of that participant's family, or any entity since the beginning of the corporation's last fiscal year and presently proposed financial transactions by the corporation with that person or entity if
 - the transactions in the aggregate exceed \$20,000; and
 - the participant in the solicitation or a member of the participant's family is a party to the transaction or is employed by, is an officer or director of, or owns, directly or indirectly, an interest in the entity who is a party to the transaction;
- a brief description of all legal proceedings to which each participant in the solicitation is a party with interests adverse to the corporation or its subsidiaries during the last 10 years;
- a brief description of the methods to be employed to solicit proxies, if other than by the use of the mail; and a statement of the total amount estimated to be spent and the total already expended on the solicitation of proxies;

- a statement indicating who will bear the expense of solicitation, and the amount each participant in the solicitation has contributed or has agreed to contribute, unless the participant is a contributor of less than \$500 in the aggregate;
- a statement indicating whether reimbursement for solicitation expenses will be sought from the corporation; and
- if the proxy statement relates to any matter requiring notice to shareholders by law or to a special shareholders' meeting for which any participant in the solicitation sought shareholder signatures on a document calling for the special meeting
 - a description of each matter which is to be submitted to a vote of the shareholders and a statement of the vote required for its approval; and
 - a description of any substantial interest, direct or indirect, by shareholdings or otherwise, of each participant in the solicitation, or family member of that participant, in any matter to be acted upon at the meeting, unless the participant or family member owns shares in the corporation and would receive no extra or special benefit not shared on a pro rata basis by all other shareholders of the same class.

Important Definitions

3 AAC 08.365 defines the following:

“affiliate” has the meaning given in AS 10.06.990;

"annual report" means a summary by the corporation of its business activities, results of operations, and financial condition for the last fiscal year, including consolidated financial statements confirming that the corporation's accounts were audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of the state or the United States as required by 43 U.S.C. 1601-1629.

"board" means the board of directors of the issuer of shares for which a proxy is solicited;

"contest" means an issue in which the board expects one or more solicitations to be made which will be subject to 3 AAC 08.355;

“control” has the meaning given in AS 10.06.990;

"corporation" means the issuer of shares with respect to which a proxy is solicited;

"electronic forum" means a forum that is created on and accessible by means of the Internet, and that allows communication among users; it includes

- blogs or other websites that allow for the posting of reader comments; and

- websites for social networking, websites for microblogging, and other forms of electronic communication through which users create communities on the Internet to share information, ideas, personal messages, videos, and similar content.

"entity" means an individual, sole proprietorship, partnership, joint venture, trust, association, firm, corporation, or other organization, whether or not operated for profit,

"executive officer" means the president, secretary, treasurer, a vice president in charge of a principal business function, such as sales, administration, or finance, or any other person who performs similar policy-making functions for the corporation;

"family" means an individual's spouse, parents, children, or siblings by blood or adoption;

"financial transaction" means

- the buying, selling, or leasing of real or personal property or of an interest in real or personal property, including, but not limited to, an option, right of first refusal, or joint venture interest;
- the buying or selling of services;
- the loaning or borrowing of money or a preliminary commitment to that transaction; or
- any other transaction which is substantially similar in nature to those listed in this paragraph, excluding distributions mandated by 43 U.S.C. § 1606(j), effective December 18, 1971;

"last fiscal year" means the fiscal year of the corporation most recently completed before the date of the meeting for which proxies are to be solicited;

"minor offense" has the meaning given in Rule 2 of the Alaska Rules of Minor Offense Procedure;

"nominee" means a person who has consented to being named in a proxy statement and who has agreed to serve if elected;

"participant" means

- the board and the corporation;
- a nominee for whose election as director proxies are solicited;
- a committee or group which solicits proxies or a member of the committee or group;

- a person who finances, directly or indirectly, the solicitation of proxies, except a person who contributes not more than \$500 and who is not otherwise a participant;
- a person who solicits proxies;

“participant” does not include

- a person or organization retained or employed by a participant to solicit shareholders whose activities are limited to the performance of the person’s duties in the course of employment;
- a person who merely transmits proxy soliciting material or performs other ministerial or clerical duties;
- a person employed by a participant in the capacity of attorney, accountant, or as an advertising, public relations, or financial adviser, whose activities are limited to the performance of the person’s duties in course of employment; or
- a person regularly employed as an officer or employee of a participant who is not otherwise a participant.

"proxyholder" means a person to whom a proxy or power of substitution is given.

"proxy statement" means a letter, publication, press release, advertisement, radio/television script or tape, or other communication of any type which is made available to shareholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

“residence” means residence for purposes of voting; as determined under AS 15.05.020;

"shareholder" means one who is the holder of record of a share in the corporation.

“subsidiary” has the meaning given in as 10.06.990.

How do I File a Complaint?

If you believe one or more of the statutes or regulations referenced in this booklet has been violated, you may file a request for investigation with the Division. Your request must be in writing and submitted on the ANCSA Request for Investigation Form, or contain the same information as that form requests. 3 AAC 08.360 sets out the process and information needed for a Request for Investigation.

The ANCSA Request for Investigation Form is located on the Division’s website. If you do not have access to the internet, or are having difficulty downloading the form from the website, you may call or write to the Division and we will send you a copy of the correct form.

Once you have completed the Request for Investigation Form, you must sign it, date it, and mail or email it to the Division. The Division will review your request and determine whether further information is required from you or from the person or persons identified in your request.

What Happens After I File a Complaint?

Once the Division receives a complete request for investigation containing all of the information required under 3 AAC 08.360, the Division will notify the complainant within **10 business days** whether it will open or decline to open an investigation.

If the Division decides to open an investigation, it may provide the alleged violator and the corporation written notice of the investigation. The details of the investigation are confidential, but the Division may disclose information, including the identity of the requester, if necessary or appropriate in order to complete the investigation.

At the conclusion of the investigation, the Division will notify the requester, the corporation, and the alleged violator in writing of the Division's decision to take no action or to issue an order under AS 45.55.920.

Sanctions

AS 45.55.920 authorizes the Division to initiate enforcement actions for violations of the Alaska Securities Act and regulations. If the Division determines that a person is in violation of the Act or regulations, the Division may issue a cease and desist order, require the person to file future materials 10 working days before distribution, bring an action in superior court to enforce compliance with the law, impose a fine, void proxies, or take other appropriate action.

Conclusion

The statutes, regulations, and bylaws relating to ANCSA corporations and shareholders are intended to promote transparency in the solicitation process and the fairness of elections. They are also intended to help protect shareholders and corporations from unscrupulous individuals.

Please remember that this booklet is merely an overview. Shareholders are required to comply with all laws, regulations and bylaws applicable to their proxy solicitations or campaigns.

To view the full text of the Alaska Native Claims Settlement Act Proxy Solicitation Regulations, please visit the Division's website at <http://commerce.alaska.gov/bsc/>.

If you have any questions, please contact the Division of Banking and Securities at (907) 269-8140 or e-mail us at ancsa@alaska.gov.